B. Kumar Vs. Management of National Institute of Port Management, Rep. by Its Administrative Officer and the Presiding Officer, Central Govt. Industrial Tribunal-cum-labour Court

B. Kumar Vs. Management of National Institute of Port Management, Rep. by Its Administrative Officer and the Presiding Officer, Central Govt. Industrial Tribunal-cum-labour Court

SooperKanoon Citation : sooperkanoon.com/831259

Court : Chennai

Decided On : Sep-30-2005

Reported in : (2006)ILLJ862Mad; 2005(4)LLN658

Judge : P.K. Misra and ;N. Kannadasan, JJ.

Acts : Tamil Nadu Societies Registration Act; Hindu Marriage Act - Sections 7(1) and 17; Indian Penal Code (IPC) - Seciton 494; Industrial Disputes Act - Sections 17B; Industrial Employment (Standing Orders) Act - Sections 10; Services Rules; Services Regulations; Civil Procedrue Code - Order 41, Rule 22; Constitution of India - Articles 226 and 236

Appeal No. : Writ Appeal Nos.1254 and 1255 of 2005, Writ Petition No.29827 of 2004 and WAMP No. 2283 and 2284 of

Appellant : B. Kumar;management of National Institute of Port Management, Rep. by Its Administrative Officer

Respondent : Management of National Institute of Port Management, Rep. by Its Administrative Officer and the Pres

Advocate for Def. : S. Ravindran, Adv. and ;N.G.R. Prasad, Adv. for Row and Reddy

Advocate for Pet/Ap. : N.G.R. Prasad, Adv. for Row and Reddy and ;S. Ravindran, Adv.

Judgement :

P.K. Misra, J.

1. The facts giving rise to the present litigations are as follows: The National Institute of Port Management was formed in 1984 and registered as a Society under the Tamil Nadu Societies Registration Act. The Institute functions under the supervision of a Governing Body consisting of the Secretary to Government of India, Ministry of Surface Transport as ex-officio Chairman and other Members representing the Ministry of Surface Transport, Planning Commission. Shipping interests, National Management Institutes, the Indian Ports Association and also some major ports. The Institute was set up to train the officers of the major ports of India. The dispute in these matters relate to disciplinary proceedings and subsequent determination by the Proceeding Officer of the Central Government Industrial Tribunal-cum-Labour Court. For convenience, the contesting respondent in writ petition is referred to as the workman and the petitioner in the Writ Petition is referred to as the Management.

1.1 The workman joined the service as a Driver on 08.11.1986. On 25.05.1989, the Administrative Officer of the Organization issued an order purporting to be the guidelines for drivers of the National Institute of Port Management. At the time of entering into service, the workman had given a dependents' declaration form, declaring the various dependents so far as he was concerned. He had indicated therein about his wife. It is alleged that on 11.11.1992 the workman married another lady namely P.Nirmala and the factum of such marriage was entered in the Marriage Register maintained under Hindu Marriage Act in the office of the Sub Registrar's Office, Thiruvotriyur. When the aforesaid matter came to the knowledge of the management, a memorandum dated 15.06.1993 was issued to the workman, wherein he was required to furnish the details.

1.2 Subsequently, by an order dated 23.6.1993, the workman was placed under suspension, wherein it was indicated that the civil marriage was registered on 11.11.1992 between the workman and the co-employee, even though the workman was already married. It was further indicated that the workman had suppressed such information about the second marriage. It was further indicated that the workman was liable for having committed the offence of bigamy, which is an offence under Section 17 of the Hindu Marriage Act and Section 494 of the Indian Penal Code. Thereafter, the disciplinary proceeding was initiated. A charge sheet and show cause notice was issued on 03.12.1993. The charge sheet narrates about the civil marriage between the workman and the co-employee on 11.11.1992 and the fact that the workman had suppressed such second marriage from the administration, till notice was served on the workman on 15th June 1993. The second charge referred to the National Institute of Port Management's rules and regulations and indicated that the conduct and disciplinary rules prohibited bigamous marriage. The other charges indicated that the workman was liable for being prosecuted under Section 17 of the Hindu Marriage Act and Section 494 of the Indian Penal Code for having entered such illegal and bigamous marriage and there was illicit relationship with co-employee of the organization.

1.3 In the departmental enquiry, the workman pleaded that even though the certificate was issued, no marriage had been solemnized. It was further indicated that there was no illegal or illicit relationship. It was also indicated that there was no suppression on the part of the workman.

1.4 The inquiry officer came to the conclusion that allegations had not been proved against the workman, as there was no evidence regarding the solemnization of marriage or documents of any ceremony. The inquiry officer also found that the other allegations have not been proved. It was observed by him that question of prosecuting under Section 17 of the Hindu Marriage Act and Section 494 of the Indian Penal Code did not arise in the absence of a complaint by the first wife.

1.5 The disciplinary authority did not accept the findings of the inquiry officer in respect of charges 1, 2 and 4 and found that the workman was guilty in respect of the charges 1, 2 and 4 and issued second show cause notice to the workman to

show cause as to why he should not be removed from service. Since the validity of such notice is the question to be decided, it is appropriate to quote the notice in toto at this stage.

'A copy of the report of the Inquiry officer is enclosed (Appendix I). The findings of the disciplinary authority are given in the statement enclosed (Appendix II), together with reasons for disagreement with the findings of the Inquiry Officer.

2. In the circumstances explained in Annexure II, the disciplinary authority proposes to impose on Shri B.Kumar the punishment of removal from service.

3. If Shri B.Kumar wishes to make any representation or submission, he may do so in writing to the disciplinary authority within 15 days of receipt of this communication.'

1.6 Thereafter, the workman submitted the further explanation. However, the disciplinary authority passed an order dated 02.06.1997 dismissing the workman from service. The appeal filed by the workman was dismissed on 23.03.1998. The conclusion of the appellate authority was to the effect that the workman had entered into matrimonial alliance with Ms. P.Nirmala, while the first marriage was subsisting and therefore, the workman was guilty of violating the provisions of NIPM Conduct and disciplinary Rules 19(b).

1.7 Subsequently, the terminal benefits were made available to the workman. However, the workman raised an industrial dispute. In the Claim Petition before the Industrial Forum apart from raising the validity of the second show cause notice as well as other defects in the disciplinary proceedings, the workman also pointed out that the National Institute of Port Management's rules and regulations which were approved by the Governing Body on 28.09.1992 were notified in the Notice Board for the first time on 12.07.1993 and before such rules and regulations became effective in the order dated 25.05.1989, relating to conduct of Driver, nothing had been indicated about such bigamous marriage being a misconduct.

1.8 The Industrial Tribunal came to the conclusion that the second show cause notice was not in accordance with law inasmuch as the disciplinary authority before differing from the conclusion of the inquiry officer had not given any opportunity of hearing to the workman on such aspect and the workman was only asked to show cause as to why his services should not be terminated and he was never given any opportunity on the question as to why the disciplinary authority should not differ from the findings of the inquiry officer, even though the said findings of the inquiry officer were in support of the workman. Accordingly, the Industrial Forum set aside the order passed by the disciplinary authority and directed reinstatement of the workman, without back wages.

1.9 Such decision of the Industrial Tribunal has been challenged by the Management in W.P. No. 29827 of 2004. During the pendency of such writ petition, the workman filed an Application claiming benefit under Section 17-B of the Industrial Disputes Act. Various affidavits and reply affidavits were filed in connection with such interim matters and ultimately, the learned Single Judge refused the prayer of the workman regarding payment of any benefit under Section 17-B of the Industrial Disputes Act. The Two Writ appeals are directed against such interim orders of the learned Single Judge. While taking up the writ appeals, it was felt necessary to refer to the various materials and the orders in the connected writ petition and thereafter the records in the connected writ petition had been called for. That is how all the three matters have been listed. On consent of the counsel appearing for both the parties, the writ petition as well as the writ appeals were taken up for hearing and are being finally disposed of by the present order.

2. The contentions raised by the management in the writ petition are to the following effect: 1) The inquiry officer without considering the admission of the workman regarding issuance of marriage certificate and recital in such marriage certificate to the effect that the marriage had been solemnized in accordance with Section 7(1) of the Hindu Marriage Act, has come to an erroneous conclusion that there was no material to come to the conclusion that the marriage in accordance with the provisions of the Hindu Marriage Act had been solemnized between the workman and P.Nirmala. 2) In the second show cause notice, the workman had

been permitted to make his submissions and the report of the inquiry officer as well as the disciplinary authority, which indicated the reasons that the disciplinary authority intended to differ from the inquiry officer's report, had been furnished and the workman had in his reply indicated about both the reports and therefore the workman was not prejudiced in any manner, merely because it has not indicated that the conclusion of the disciplinary authority was only a tentative conclusion, does not have the effect of initiating such notice issued by the disciplinary authority. 3) Even assuming that there was any defect in such notice, the Industrial Forum should have decided the main question relating to bigamy as on merit all materials were available on record and merely on the basis of such technical defect, the order of termination should not have been set aside. He has further submitted at any rate even assuming that there is any defect in the enquiry, this Court should remand the matter either to the disciplinary authority or even to the Industrial Forum for recording findings on such aspects.

3. Learned counsel appearing for the workman has submitted that the conclusion recorded by the Industrial Forum is based on materials on record and does not call for any interference by this Court while exercising jurisdiction under Article 236 of the Constitution of India. He has further submitted that at any rate the rules and regulations had been published for the first time on 12.07.1993 and therefore there was no such Rule in force which made any bigamous marriage as a misconduct for the purpose of taking any disciplinary action and since the alleged second marriage has been already declared null and void by the competent court of law, and since no prosecution under Section 17 of the Hindu Marriage Act and Section 494 of the Indian Penal Code had been initiated, it would not be just and proper to revive the disciplinary proceedings and the order of the Tribunal, reinstating the workman in service should be confirmed.

4. The contention raised in the writ appeals is to the effect that even though the workman was employed, the said employment was not 'gainfully employed' as the employment was on part-time basis and the remuneration given to the workman was much lower than the last drawn wages of the workman and therefore the learned Single Judge should not have denied the benefit under Section 17-B to the workman on the basis of the technical finding regarding filing of an affidavit in a

misleading manner. He has further submitted that at any rate the workman had also filed a further affidavit clearly indicating that by the time the matter related to 17-B was taken up, the said workman had ceased to be in any employment whatsoever and therefore from that stage onwards, atleast the benefit of Section 17-B should be given.

4.1 Learned counsel appearing for the management has supported the order passed by the learned Single Judge on such aspect by submitting that the order has been passed on the consideration of the relevant facts and circumstances and the order being an interlocutary order, there is no necessity to interfere with such order and at any rate, the Writ Petition itself can be disposed of at an early date.

5. Since the Writ Petition itself has been clubbed with the Writ Appeals and is being taken up for disposal, we do not think it necessary to deal with the contentions raised in the writ appeals which are against the interim orders passed by the learned Single Judge. We are therefore concentrating on the questions raised in the writ petition.

6. A mere perusal of the second show cause notice issued by the management leaves no room for doubt that the conclusions arrived at by the disciplinary authority were not tentative conclusions but final conclusions. In such show cause notice, the workman was never called upon to make any submission regarding any tentative finding of the disciplinary authority but he was asked to show cause as to why he should not be removed from service. The tenor of the notice clearly indicated that the conclusions were not tentative. The Tribunal by placing reliance on several decisions of the Supreme Court has come to the conclusion that such notice was clearly contrary to the ratio of the decisions of the Supreme Court. On careful consideration of the reasonings given by the Tribunal, we do not find any error of law so far as such findings are concerned. As a matter of fact, in addition to the above defect in the notice, we find that notice was defective in another aspect, namely, even though the notice called upon the workman to show cause as to why he should not be removed from service, we find that he has been dismissed from service. The difference between 'removal from service' and 'dismissal' is too well known to be repeated. When the management had issued

notice regarding removal from service, obviously the order of dismissal on the basis of such notice became vulnerable. Apart from the above, as already indicated, there was a glaring defect in the procedure adopted, inasmuch as the disciplinary authority before coming to a definite finding differing from the report of the enquiry officer had never given any opportunity to the workman on such aspect, even though the law on this aspect appears to be fairly clear. In such view of the matter, we agree with the conclusion of the Industrial Tribunal that the order of dismissal on the basis of defective notice was invalid.

7. Learned counsel for the management had submitted that even assuming that there was some justification for such conclusion, the Industrial Tribunal should have either remanded the matter to the disciplinary authority to proceed from the stage from which the proceeding became defective or the Tribunal itself could have come to any final conclusion on the matter by scanning the materials after giving opportunities to the parties. In normal course we would have considered the option of remanding the matter either to the disciplinary authority or to the Industrial Tribunal to come to any particular conclusion regarding the matter relating to the second marriage. However, for reasons indicated hereinafter, we do not intend to remand the matter for fresh disposal either by the Tribunal or even by the disciplinary authority.

8. As already indicated, the Rules were approved by the Governing Body on 28th September 1992. The question is to from which date such rules and regulations became effective. The rules and regulations contain several aspects including Chapter 9 which relates to conduct and discipline rules, Clause xix relates to restrictions regarding marriage and it is extracted hereunder:

'xix. Restrictions regarding marriage:

a) No employee shall enter into, or contract, a marriage with a person having a spouse living.

b) No employee having a spouse living, shall enter into, or contract a marriage with any other person. Such acts will render an employee liable for dismissal.

c) An employee who klhas married a person other than of Indian Nationality shall forthwith intimate the fact to the Director.'

In the beginning of Chapter 9, it is indicated that these Rules apply ipso facto to all employees of the Institute.

9. In 1990 II LLJ 96 : (S. Alamelu v. The Superintending Engineer, South Arcot Electricity System (S), Villupuram), the Regulation contained an embargo on a woman employee contracting a marriage with any person who has a wife living without obtaining the permission of the Board. However, in the certified Standing Orders no such misconduct has been enumerated. The question relating to validity of such a charge was considered by the Division Bench. The Division Bench while allowing the writ appeal and quashing such charge, observed :-

'6. ...It is true Regulation 25(22) as such sets forth an embargo on a woman employee contracting a marriage with any person, who has a wife living, without first obtaining the permission of the Board. It is admitted that the Regulations do not by themselves say that a violation of Regulation 25(2) would amount to misconduct, attracting disciplinary action. Even if such a provision has been made, the Standing Orders under the Act having got formulated and certified and they having not provided for such a misconduct, the Regulations would not prevail and could not be invoked to take disciplinary action. that is the result of sanctity annexed to the Act and the Rules, and the Standing Orders under them, and their overriding effect on other service Rules and Regulations.'

10. The aforesaid decision was again followed in another Division Bench in 1995 I LLJ 931 : (J. Dhanaraj v. T.N.E.B. and Ors.), where Justice Srinivasan (as His Lordship then was) quashed the disciplinary proceedings based on the alleged bigamous marriage, on the ground that it was not as a misconduct in the Standing Orders.

11. Similar view was expressed in another Division Bench decision reported in 1997 II LLJ 1043 : (Tamil Nadu Electricity Board v. Central Organisation of Tamil Nadu Electricity Employees and Anr.), wherein it was observed as follows :-

'13. The Apex Court, in Glaxo Laboratories (I) Ltd v. Labour Court, Meerut and Ors. (supra) has held that a non-enumerated misconduct cannot form subject matter of a disciplinary action. Following the said view, in U.P. State Electricity Board v. Hari Shankar Jain (1978-II-LLJ-399)(: SC) it has been held that without amendment to the certified standing orders and by including the various misconducts enumerated in the conduct regulations as applicable to workmen covered by the Standing Orders would really be by passing the provisions for amendment to certified standing orders prescribed under Section 10 of the Industrial Employment (Standing Orders)Act. In that view of the matter, we have no hesitation to conclude that the circular now issued is against the provisions of the Act. Therefore, we are in conformity with the view of the learned single Judge that a service regulation cannot be replaced by a circular or a memorandum, introducing series of misconducts nor enumerated in the Standing Orders. So as to ensue safeguard to the workmen they should know what are the service conditions and what constitutes misconduct, at the time of entry into service. In the Standing Orders, as many as 36 misconducts are enumerated. To read something else to that, it can be only by way of resorting to an amendment to the certified standing orders, under Section of the Act which gives ample opportunity for the employees to have their say and to take the matter to the finality in the form of judicial review.'

12. The ratio of the aforesaid decisions which relate to certified standing orders is also equally applicable to the disciplinary proceedings under the relevant Rules and Regulations of the concerned employer. What is significant to note is that unless a particular misconduct is enumerated as a misconduct in the relevant Rules and Regulations and such Rules and Regulations are brought to the notice of the employee in a manner contemplated in law, an employee cannot be punished on the basis of some uncirculated resolutions.

13. Law is thus well settled that an employee can be proceeded against in any departmental proceedings on the basis of rules relating to discipline. However, such Rules are obviously to be brought to the notice of the concerned. Even though requirement of publication in the gazette as applicable to the statutes and statutory rules is not applicable, it cannot be disputed that the disciplinary Rules

laying down the 'misconducts' applicable to any organization have to be published or notified in a reasonable manner before such rules can be said to be binding.

14. Learned counsel for the management has submitted that since the copy of the rules and regulations was available in the library, the Rules and Regulations become effective on the very day on which it was approved by the Governing body on 28.09.1992. Particularly he has referred to a recital in the amendment to the rules and regulations which indicates that the copy of rules and regulations approved on 28.09.1992 was placed in the library. The learned counsel submits that from the above recital, it is evident that the Rules became effective from 28.09.1992. This submission made by the learned counsel is objected to by the learned counsel for the workman by referring to Ex.W.1 which is a photo copy of the notice board display dated 12.07.1993. Typed copy of such notice board display is also marked as Ex.W.6. The contents of such notice in the notice board are extracted hereunder:

'A copy of NIPM rules and regulations as approved by the Governing Body is placed in the library for reference of all employees. The Chapter on 'Pension' is withheld for the present as per decision of the Governing Body.

Employees are advised to take notice of the importance provisions of the Rules and Regulations. If any xeroxing is to be done by them, the Librarian's permission is to be obtained first for the same. A xeroxing charge of 50paise per page (Or Re.1/- per sheet) will be credited by the employees to the Librarian which in turn would be remitted to FAO. The xeroxing if required, can be done at the machine available on the library, subject to xerox machine being free and not being required for other official work of the Institute.

Under no circumstances will the set of Rules and Regulations be taken out of the library by any body.'

According to the counsel for the workman, this only indicates that for the first time it was notified in the notice board regarding the rules and regulations. In this connection, the learned counsel for the workman has also invited our attention to the statement made by the management witness. Even though the management

witness in his proof affidavit has stated that NIPM rules and regulations were approved by the Governing Body on 28.09.1992 and it came into force from that day, in cross-examination, he has stated as follows:

'I do not know at this stage whether there was any conduct Rules for drivers other than W.5. Under W.5, there is no time period that how long these rules and regulations will apply. But according to the appointment order the petitioner accepted the rules and regulations to be amended as and when it is amended. On 28.09.1992, NIPM rules and regulations were framed. It was not put to notice to the petitioner separately and we have not given individual notice to the employees but we have kept the same in the library and informed the same to all the employees orally. Before Ex.W.1 dt.12.7.93, we have not produced any document to show any notice given to employees in general.'

15. A careful perusal of the primary document, namely Ex.W.1 which corresponds to Ex.W.6 read with the statement made by the management witness in cross-examination, leaves no room for doubt that for the first time it was notified in the notice board on 12.7.93 that rules and regulations had been approved by the Governing Body and all concerned would be required to go through the said rules and regulations, a copy of which is available in the library. The learned counsel appearing for the management to wriggle out of the aforesaid position has made a submission to the effect that the workman himself had admitted in claim petition that the Rules and regulations were effective from 28.09.1992, particularly he has placed reliance upon para 7 of the claim petition to the following effect:

'With regard to the second component of the charge, the petitioner submits that the NIPM rules came into force only on 28.09.1992.'

16. We are not in a position to accept the submission made by the learned counsel for the management. The claim petition made by the workman has to be read in its entirety and a particular statement made here and there should not be torn out of context to come to any particular conclusion. In paragraph 4 of the claim statement, it has been categorically stated as follows:

4. With regard to the first component of the charge, the petitioner submits that he had registered the marriage with Miss Nirmala on 11.11.92 under her compulsion and pressure only. Ms. Nirmala was well aware that I had a spouse living during the time of registration. Also the NIPM rules and regulations which was approved by the Government Body on 28,.9.92, was displayed in the respondent's notice board only on 12.7.1993 as per Ref.DIR/CIR/93. Therefore when the registration of the so called marriage with Ms. Nirmala took place I was totally unaware of the provisions of the NIPM rules and regulations under which I was charge sheeted. Had the management immediately displayed the NIPM rules and regulations after the approval of the government body, then even under any grave circumstances I would not have registered the so called marriage with Ms. P.Nirmala.'

17. In this context, one has to remember the second component of the charge which relates to suppression by the workman. As a matter of fact in the very same paragraph No. 7, the workman has also stated that 'the petitioner is not aware of the NIPM rules and regulations'. Therefore, in our opinion, the mere statement, as contained in paragraph 7 which has to be read in the context which was made, does not have the effect of categorical admission that in fact rules had come into force on 28.09.1992. The impact of the entire materials on record has to be taken into account. From the documentary evidence as well as from the statement of management witness, it is quite evident that for the first time notice was published only on 12.07.1993. The rules and regulations do not become effective as soon as the resolution was passed by the Governing body and such rules have to be notified in a reasonable manner. The management witness does not claim that such rules and regulations were notified by publishing any notice earlier than 12.07.1993. On the other hand, he has claimed that such rules and regulations were 'orally' brought to the notice of the workman. If actually such rules and regulations were brought to the notice of the workman, there will be hardly any necessity of publishing of fresh notice on 12.07.1993. In our opinion, in the absence of other materials, we are bound to accept the documentary evidence, namely, the notice dated 12.07.1993, which in fact receives considerable corroboration from the statement made by the management witness himself to the effect that before 12.7.1993, there was no such publication in writing.

18. Learned counsel for the management submitted that no such question was ever raised before the disciplinary authority and therefore the question should not be permitted to be raised. Since the management wanted to take disciplinary action against the employee, it is for the management to prove that the Rules had came into force on a particular date. The disciplinary authority has assumed that the Rules came into force with effect from 28.09.1992, merely because such Rules were approved by the Governing Body on that day. As a matter of fact, the question was specifically raised before the Industrial Tribunal and the Industrial Tribunal seems to have accepted such contention, even though, unfortunately, the Tribunal has not given any detailed reason for accepting such statement made on behalf of the workman. Even though the order of the Tribunal is not happily worded, in our opinion, the materials on record clearly support the statement made by the workman which appears to have been accepted by the Industrial Forum.

19. Learned counsel for the Management has submitted that in February 1993, the workman himself had applied for availing Scooter loan and the application itself clearly indicates that the workman must have been aware of the provisions contained in the rules and regulations relating to the Scooter loan. Even assuming that the workman was aware of such rules and regulations by the time when he made the application for Scooter loan during the month of February 1993, that does not establish that on 11.11.1992, when the alleged second marriage took place, the rules and regulations were in force.

20. A contention was raised by the learned counsel for the writ petitioner that in the absence of any categorical finding by the Tribunal, this Court while exercising jurisdiction under Article 226 of the Constitution should not arrive at any particular finding and the matter should be remanded to the Labour Court for fresh disposal to render a finding on such particular aspect.

21. Even though such is the normal position, there is no inexorable rule that in every case the matter has to be remanded to the Tribunal to render a particular finding. In order to avoid further litigation, the matter can be concluded by the High Court, particularly, when all the materials are available on record. In the present case, it is not the contention of the counsel for the petitioner that apart from the

statement made by the management witness and the documents proved by the workman, there is any other material to prove that the resolution of the Board had been circulated or brought to the notice of the workmen by any other method. The management witness has merely stated that such resolution was orally brought to the notice of the workman. Such a stand is merely to be noted to be rejected.

22. There is ample authority for the proposition that by applying the principles of Order 41 Rule 22 CPC, a writ court can sustain the ultimate decision of the Tribunal by additional reasons, of course based on materials available on record. In this connection, the decision of the Supreme Court reported in 1967 II LLJ 46 (Northern Railway Co-Operative Credit Society Ltd. v. Industrial Tribunal, Jaipur and Anr.) has been followed in 1984 I LLJ 248 (C. Umapathy v. The Manager (Marketing), Tamil Nadu Dairy Development Corporation, Madras and 2 Ors.) by a learned single Judge of this Court. By placing reliance upon the decisions of the Supreme Court in 1967 II LLJ 46 (supra) and Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji : [1965]1SCR712 and Powari Tea Estate v. Barkataki(1965-II L.L.J. 102), the learned single Judge observed :-

'4. ...There is no scope for the party who has ultimately succeeded before the statutory tribunal and authority to approach this court under Article 226 of the Constitution of India for the only purpose of canvassing a particular finding which has gone against him. There is a possibility that a relevant aspect or material already on record which, if properly assessed and considered, would have led to a finding being rendered on that aspect in favour of the party concerned. It would be equitous for this court, in the exercise of its jurisdiction under Article 226 of the Constitution of India, to permit such a party to canvass those aspects and support the ultimate order of the tribunal or authority on grounds, which have been negatived by it.'

23. Such view also receives sustenance from the observations made in paragraph 79 of the decision reported in : (1980)ILLJ137SC (Gujarat Steel Tubes Ltd. and Ors. v. Gujarat Steel Tubes Mazdoor Sabha and Ors.), which is as follows :-

'79. The basis of this submission, as we conceive it, is the traditional limitations woven around high prerogative writs. Without examining the correctness of this

limitation, we disregard it because while Article 226 has been inspired by the royal writs its sweep and scope exceed hide-bound British processes of yore. We are what we are because our Constitution-framers have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our conditions. Heritage cannot hamstring nor custom constrict where the language used is wisely wide. The British paradigms are not necessarily models in the Indian Republic. So broad are the expressive expressions designedly used in Article 226 that any order which should have been made by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle, except where gross injustice or fatal illegality and the like are present, inhibit the exercise but do not abolish the power.'

24. In a very recent Division Bench decision of this Court in 2005(3) L.L.N. 690 (General Manager, Indian Overseas Bank v. Presiding Officer, Industrial Tribunal), such view has been reiterated in the following terms :-

'30. This leads us to the next question as to whether the learned Single Judge was right in discussing the merits of the case, more particularly, having come to the conclusion that the parties did not actually plead for adjudication as to the point in reference before the Tribunal. We cannot ignore the vital fact that the issue in question has been boiling for over a period of 26 years. The learned Judge has taken note of the same in coming to the conclusion that instead of further remittance to the Tribunal for adjudication, as it involves considerable time for rendering justice, the learned Judge has taken the task of appreciating the evidence and given a finding.

31. Our attention was not drawn as to the lack of power of this Court under Article 226 to consider the materials available before the Tribunal in cases where those materials are not considered by the Tribunal while passing the award and whether remand in such case is warranted or not. In the event, this Court could consider that the remand may not serve the purpose, it can without any further controversy, resolve the dispute by considering the evidence in exercise of power under Article 226 of the Constitution of India. It is one thing to argue that when the Tribunal appreciated the evidence, this Court in exercise of power under Article 226 of the

Constitution of India, will not venture into re-appreciating the evidence and come to a different conclusion. Courts have held that this Court can interfere with the award only if it is perverse and the same is not supported by any material. We are also conscious of the fact that if there are some material available on record before the Tribunal which form the basis for a finding, this Court shall not venture into re-appreciate the said evidence. However, the case on hand is entirely different inasmuch as the point in issue was not discussed by the Tribunal with reference to the evidence in full which only necessitated the learned Single Judge to appraise the evidence.

32. That apart, we find that the learned Singe Judge did not disagree with the findings of the Tribunal, but has added his further reasons to support the findings in the award. In that view of the matter, we are not impressed by the argument of the learned Advocate-General in submitting that the learned Judge, instead of taking the task of assessing the evidence by himself, ought to have remanded the matter.'

25. This is not to suggest that the High Court should convert itself into an Appellate Court to re-appreciate the evidence and come to any different conclusion. What is discernible from the aforesaid decisions is that where the materials are available on record which clearly and unerringly point out to a particular conclusion, the High Court need not hesitate to arrive at such conclusion, particularly, to bring an end to the litigation. In the present case, the dispute has simmered for a pretty long period. It is not the contention of the management that any other material would be required to be produced. The concerned workman is a lowly paid employee and it would be almost impossible for him to continue the litigations.

26. Having regard to all these aspects, we are inclined to render necessary finding on the question relating to publication / circulation of the resolution rather than resorting to the conventional approach of remanding the matter for rendering a finding, which would have the effect of continuing a long pending litigation.

27. Since we have come to inevitable conclusion that rules and regulations were not in force on 11.11.1992 and apparently came into force only when notice was

published on 12.07.1993, no useful purpose will be served by remitting the matter either to the Industrial Forum or even to the disciplinary authority. In this context, we cannot lose sight of the fact that the declaration of nullity has been already granted at the instance of Ms. P.Nirmala, the person involved is mere a driver, the alleged bigamous marriage is punishable in a criminal court only when a complaint is made by the first wife and the matter relates to an incident which had occurred in 1992. In our opinion, no useful purpose will be served by proceeding against 'a small fry'. This is not to suggest that we are condoning any act of bigamy. However, since bigamous marriage was made a misconduct in the Rules, which came into force after the second marriage, there is hardly any justification to prolong the agony of the workman.

28. At the time when the writ appeals had been listed and were being heard, the learned counsel appearing for the workman / appellant had indicated that the workman was willing to forego the backwages/wages under Section 17-B of the Industrial Disputes Act, if he would be taken back into service. Even though the workman could not have been punished for bigamous marriage as the relevant Rule had not been notified, the fact remains that prima facie the workman had transgressed the law and cannot be characterised as absolutely blameless. In such view of the matter, for the reasons indicated, while dismissing the writ petition and directing that the workman should be reinstated within a period of thirty days from the date of receipt of the order, we observe that the workman would not be entitled to any backwages. It is however made clear that the workman shall be entitled to his regular salary with effect from the date of rejoining pursuant to the present order and the past period, during which he had remained out of service, should be notionally calculated towards his increment and other service benefits including seniority. In view of the disposal of the main writ petition itself, it is unnecessary to deal with the questions raised in the writ appeals which are accordingly disposed of. There would be no order as to costs. Consequently, the connected miscellaneous petitions are closed.