

Editorial**COVID - 19 WOES OF WORKING CLASS**

The Covid-19 epidemic continue to strangle the economic activities all over the world. The rapid spread of the virus in almost all the continents in particular the countries such as, China, US, USSR, Brazil, UK, France etc., is threatening the survival of the global economic activities. The situation is more or less the same in our country as well. The major metros are the serious victims of the virus attack with Mumbai scaling the higher number of covid victims. The country has recorded a phenomenon growth in the number of cases affected during the month of June and July. The economic activities in the Metros and major cities have come to a standstill. The Government took several steps to contain the disease. The country was locked down for almost two months in order to avoid the spread of the virus all over the country. The industries were closed. The employees in the IT Sector, the Government services, the financial sector etc., were asked to function from their houses so that the economy is not completely choked. The banks kept their branches open and rendered the essential services so that the economic activates continue uninterrupted.

The manufacturing, the infrastructure, the service, the hospitality industry etc., had to shut down their activities. The workers were asked to go back to their native places. The moment of labouers were halted due to the lock down declared by the Central as well as the State Governments. They found the living extremely difficult. The Government provided certain basic rations and essential items to the people who cannot afford; all over the country. The Central Government came out with special package to ensure that the people of the country are not left to starve. The service of the free ration has been extended for few more months so that no one would die out of starvations.

The transportation is totally disrupted. The movement from one centre to another is totally restricted. The aviation industry is worst affected. The air operations both domestic as well as international is totally choked and all the related services are equally affected.

The educational institutions have been completely closed. The children are made to sit in home and attend to their classes through online. The college education is adversely affected due to the closing of the colleges and the postponement of the examination. The students who had graduated and were selected for the appointment were not asked to report. The students who have come out of the colleges after successful completion of their education are now unemployed. The fear of the

fresh batches joining the recruitment market is staring before them and there is total frustration amongst the students who are successful in completing their education and awaiting for campus recruitment. The experts in the education industry are coming out with various suggestions. Some of them have gone to the extent of suggesting the cancellation of the examination and to give them the certificates and pass without any examination.

The employees who are fortunate to work from home have their own frustrations. The layoff of several employees by the big IT companies, the reduction in the payment of salary, the fear of losing the jobs etc., are the new challenges before the workforce in many of these sectors. With the total closure of hospitality sector, the entertainment industry etc., are yet another challenge to the huge workforce involved in these industries. The Government is not bothered to check the layoffs, the reduction in the salary, the threat of termination etc., The labour laws are totally forgotten by the employers as well as various departments from the Government. There is no check about the implementation of labour laws, the labour security etc., The garment industry is the worst affected due to the absence of the precautions that are required to be observed in preventing the spread of covid virus. Thus, there is a total lockdown of the garment industry in the country.

The Government has decided to go ahead with the revival of the economic activities. The Banking Sector is expected to play a major role in the revival of the economy and to ensure that the credit flow continue to be available to the industries. The Government is serious to see that the agricultural activities continue as usual.

The younger generation is facing a serious challenge of facing the present crisis. The Government is unable to ensure the security of jobs. The fresh jobs are not created. The protection and continuation of the existing jobs itself is a big challenge to the Government. The migrant workers are now reconciled to return to their hometowns thus creating serious problems to the economic activities in the big centers. The major metros which were absorbing a huge workforce are now not able to look after the working population and all of them are returning to their hometown to save their lives from the attack of covid. The victims have crossed over 10 million and the numbers are on the increase. The death rate is also threatening to increase. The reappearance of the virus in China is a serious concern to all the countries.

The Governments are not in a position to predict the finality in the matter of Covid-19. The hopes of finding the vaccine to control the virus is receding day by day. It was assured by the scientists from several major countries that the invention of vaccination is possible by the end of August. The trial run of these inventions are taking a lot of time. There are long procedures involved in the conduct of trials and experiments before the final stage of reaching the stage of approval by the WHO and manufacturing for the use of the covid victims. Unfortunately, none of the countries are able to predict the deadline for the arrival of the vaccine to eradicate the attack of covid-19 and as such all the calculations of economic recovery is going out of their control. Until then, we have to keep our fingers crossed and await for the permanent medical remedy for the epidemic. ■

LABOUR LAW REFORM EXPERIMENTS THAT COULD SHOW US A PATH AHEAD

Changes in labour rules by some states could help us understand how to improve policy elsewhere

It is fascinating to see the reactions to a slew of seemingly radical reforms that a few state governments have announced. Uttar Pradesh, Madhya Pradesh and Gujarat have announced

relaxations in the application of many labour laws for businesses over the next three years. A newspaper that did not put these announcements on its front page took care to put the response of

TO SEEK A FAVOUR IS TO BARTER AWAY ONE'S FREEDOM

labour unions on that page. Several editorials have cautioned against diluting protection measures for labour. It has always been hard to experiment with reforms in India. Critics, however, seem appear unwilling to see many of these as policy experiments that can be tweaked based on experience and evidence. Nor do they seem ready to ask counterfactual questions. They also appear to lack an appreciation of the context.

India had a relatively disappointing last decade in terms of standard economic parameters: economic growth and employment rates. The decade of the 2020s has begun on an even more ominous note. There is an overhang of financial-sector problems, a legacy that originated in the previous decade.

Household saving rates have declined and capital formation in industry is languishing. Employment generation is too weak to generate hope and fulfil aspirations of our youth demographic bulge. The risk of another lost decade is non-trivial. India's factor markets have long eluded reforms. Bold thinking is what's needed now.

The National Democratic Alliance government that took office in 2014 attempted to improve the onerous and impractical Land Acquisition Act of 2013, but gave up in the face of political resistance from within and without. Similarly, it had the right intentions on labour reforms, but had to confine itself to token measures. An all-party consensus would have served India well and would serve us well even now. But that is a tough ask, as it takes two hands to clap. Therefore, the only option left to the government is to use perceptions of a serious economic crisis to undertake far-reaching reforms and then observe how they play out. This is not very different from what reformers did in 1991.

Most of the reforms that need to happen, barring financial sector reforms, are the responsibility of states. Whether it is electricity generation or distribution, water distribution and pricing, reforms of school education to improve outcomes, or labour and land reforms, all of these are substantially in the hands of state governments. In such a situation, if some states take seemingly radical measures and other states do not, it actually provides a good

setting for a controlled experiment. It will give rise to a rich body of evidence that can be deployed to improve policies in the same states, or elsewhere.

We had comprehensive protection for organized-sector workers in our statute books all these years. What is their record? India has one of the world's highest proportion of informal workers. Commentators question the record of Chapter VB of the Industrial Disputes Act, which applies to industrial establishments employing not less than 100 workmen, in holding back job creation. In other words, with the bulk of India's establishments employing less than 100 workers, the implicit message is that this ceiling did not act as a binding constraint.

Two responses come to mind. One is that the impact of policy is often asymmetric. Indeed, that is the default effect. The repeal of the said provision may not immediately lead to employment generation because other hurdles remain, but its existence would surely retard job creation. That is what asymmetry is all about. That calls for a comprehensive approach to labour law reforms, instead of a piecemeal one.

The second question to ask is whether rigorous empirical evidence is demanded of other policy changes. India enacted a law on land acquisition in 2013. What is its record? Has it facilitated land sales at better prices, or has it dampened transactions? If it was meant to improve the lot of farmers, then why did so many farm loan waivers have to be given, and why do so many farmer suicides continue to take place? Of course, many other variables impinge on their condition. That is precisely the point with respect to the amendment of the relevant section of the Industrial Disputes Act. It is possible that a weak State compensates for poor execution with stringent rules on the book. It is sensible to have fewer laws and implement them more effectively.

The law of unintended consequences has blighted India's many seemingly well-intentioned policy decisions in favour of the poor, the marginalized, and micro and small businesses. These have been condemned to the status quo. Not so long ago, the

NEVER BEND BEFORE THE INSOLENT MIGHT

leader of a leading labour union said that companies which earlier needed 100 workers could now operate with just 20 to 30 due to mechanization; and hence, the Chapter VB threshold should be lowered.

Intelligent Indians should worry about such attitudes and logical absurdities, rather than

wailing over the recent reform measures adopted by a few states. We can hold their feet to the fire when needed, but we would do well to cheer them too. Otherwise, the quality of governance would be as sloppy as the criticism leveled against it. These are the author's personal views.■

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WHITE-COLLAR JOBS THAT SINKING FEELING

At 11.45am on 6 April, an HR professional working with NIIT Technologies was requested to "catch up" with his supervisor via Microsoft Teams. What followed wasn't pleasant. "Put in your resignation over email and write you are resigning due to personal reasons. That way, your background checks will not get affected in the future," the supervisor told him in a measured tone, adding that a Boston Consulting Group audit had flagged extra employees in HR. Six other employees from NIIT Technologies' HR department were asked to put in their papers the same day.

The company did not officially clarify why the layoffs came in April, during India's lockdown to flatten the covid-19 curve. Runki Goswami from NIIT Technologies' communication team called this writer twice to explain that the terminations could be performance linked. On May 5, the company's management, during an analyst call, alluded to "very aggressive cost cuts"—although retrenchments were not mentioned, the company did highlight cancellation of salary hikes besides "wage cuts for partial year".

The professional is the only earner in the family. Worse, he has two equated monthly installments (EMIs) worth Rs.21,000 to service.

As factories in India and much of the world stopped humming, offices shut down and people stayed indoors, many businesses faced a slide they haven't seen in decades. This has led to tremendous job insecurity among India's white-collar employees—the ranks of office and professional workers. The fallout of covid-19 lockdown has affected the top layer of India's job pyramid.

Nearly every company has clamped down on new hiring as a first step towards keeping expenses low.

There is a near complete hiring freeze for white-collar roles in aviation, tourism, hospitality, e-commerce, media, logistics, real estate and construction. Many companies have dumped performance appraisals and bonuses for the year, and have sent employees on leave without pay. Retrenchments in companies with weaker cash flow are just about beginning.

Of course, this jobs shock pales before the suffering of the marching migrants and plight of employees in the unorganized sector. That said, the stress in the white collar space shows the fallout from covid-19 has not spared any segment.

Indian white-collar workers have seen through two previous crises—the dotcom bubble burst in 2001-02 and the financial crisis that followed the collapse of Lehman Brothers in 2008-09. Entrepreneurs and employees lost their shirts in both. The current pandemic, however, outweighs everything, simply because of the number of industries hurt and the countries it has swamped.

THE NUMBERS

In March, Mint predicted that about 136 million workers in India employed in non-agricultural sectors have no contracts and are the most vulnerable in the aftermath of the coronavirus outbreak. While the first phase of the covid-19 outbreak impacted many of them—the daily wagers and blue-collar workers—the aftermath would jolt the higher-paid, upwardly mobile white-collar employee.

The Centre for Monitoring Indian Economy has stated that the count of salaried employees has dropped from 86 million in 2019-20 to 68 million in April 2020. However, even blue-collar workers can be salaried. Thus estimating the white-collar workforce at risk is

a tricky proposition. Experts said that up to 20 million of them could be at risk of being axed.

K.R. Shyam Sundar, labour economist and professor of human resources management at XLRI, Jamshedpur, explains. "The services sector, which employs most white-collar employees, has been the worst impacted because of covid-19. The sector employs 144 million. If you exclude government and other core private sector jobs in services, the workforce totals around 100 million. About 30% of these jobs would be at risk," he said. He pegged the white-collar employment in peril at a staggering 20 million.

Devashish Sharma, chief business officer of Taggd, the recruitment solutions brand of HR-tech company People Strong, has a lower number. He feels about 2.4 million of the white-collar workforce could be laid off post covid-19. India's workforce in the organized segment totals about 37 million. Around 8 million of the organized sector are white-collar employees today, he said. That number could shrink to 5.6 million by the end of May.

BLOODBATH IN JUNE

In his rented home in Pune, a business process outsourcing (BPO) worker spends time on free courses on a computing language called SQL (Structured Query Language). The 29-year-old man was pink-slipped in April. The senior process associate, as he was called, was doing well in a technology support role for Amdocs, a software and services multinational. He was not employed by Amdocs directly, but via the rolls of a staffing company. Staffing companies hire and place workers on fixed-term contracts with clients.

"Many associates started receiving e-mails mentioning their last working days. It was 8 May 2020, for me," he said. No one explained why his project came to an abrupt end. "My contract was for two years but I was asked to go after 15 months," the associate said on the phone. Now, he has little clue on how to pay back his personal loan EMI of Rs.6000 a month, besides rent. Other colleagues who were fired, he said, had bigger liabilities, including home loans.

A spokesperson from Amdocs said that the company

complies with all applicable laws and that no Amdocs employee has been terminated in India as a result of the coronavirus situation. That's technically correct since the employees whose contracts got terminated were on the rolls of the staffing companies.

Over 100 of those who lost jobs at Amdocs raised a complaint with a local union, the National Information Technology Employees Senate (NITES). The union is exploring legal options since the terminations violate state government notifications against lay-offs during the lockdown. Additionally, the union has filed a public interest litigation in the Supreme Court detailing how "several companies across the country have started to terminate its employees without any reasonable cause or have started withholding their salaries".

Anticipating legal complications, lawyers have advised corporates to hold on to their employees till the lockdown is completely lifted. "We are advising clients on a mutual settlement with the employee since there are penal provisions under the Epidemic Diseases Act and the Disaster Management Act," said Suyash Srivastava, partner at L&L Partners, a law firm. The two acts can be invoked against an employer if a government notification is disregarded.

Nonetheless, employees in companies with falling revenues see the writing on the wall. It is a matter of time before large-scale lay-offs are announced, starting May-end or June. A small number of companies have already made their retrenchment plans public. Clothing brand Blackberrys, for instance, said that it has downsized its employee base by 120 and the measure was "essential for the survival of Blackberrys". Then, food delivery company Swiggy said that it planned to lay-off kitchen and support staff over the next one month. Although the company did not confirm, estimates of the number vary between 500 and 900.

The support staff could form the bottom but heavier rung in a company's employee pyramid. When they are pink-slipped, the whole pyramid shrinks, Rituparna Chakraborty, co-founder of staffing firm TeamLease said. If there are less people at the bottom, a company, by extension, can do with fewer managers and

SUCCESS COMES TO THOSE WHO DARE AND ACT

supervisors. "Heads will roll across organizational structures. The cost of 500 or 1000 people (at the bottom) in a few companies would be equivalent to 50 of the middle managers".

SALARY BUBBLE HAS BURST

About 40 employees from a financial advisory firm came online, with glasses of wine and whiskey. Some joined with water. It was a virtual 'happy hour'—there was even someone singing yeh shaam mastaani.

The event was organized by Vista Rooms, an upmarket holiday home rental company. The firm grew aggressively over the last year adding 350 villas across India. It did a business of Rs.4 crore a month till February, employing 200. Till covid-19 struck. "We are preparing for a scenario where it would take a long time for things to pick up," co-founder Amit Damani said. Damani asked 25% of his employees to go on leave without pay. The rest took an average of 30% haircut in salaries.

The virtual events are a way to keep his employees busy. Corporates signing up pay a fee of Rs.5,000 an event.

In exchange, they get travel credits to stay at Vista Rooms' properties, whenever they get comfortable with travel.

Like Vista Rooms, many other organizations have announced salary restructuring. Mint had earlier reported that national carrier Air India Ltd had initiated a 10% salary cut for its employees; nearly all private airlines have either cut or deferred pay. Some have asked a section of their staff to go on leave without pay. Apart from aviation, there have been salary cuts in most front-line sectors: hospitality, F&B (food and beverage), travel, technology, media.

"Almost in all cases, the variable pay will vanish because company's performance would be impacted," said Shiv Agrawal, managing director of talent acquisition company ABC Consultants. "We are looking at a minimum 18-24 months hit for an employee, for them to get back to where they were

before covid-19. We are telling people—write-off 2020." Vice-presidents and above were at a 30-40% variable pay in some companies. Post-covid, the variable component could grow to 50%, Devashish Sharma of Taggd predicted. Variable pay at mid-management levels used to hover around 15-20%; it is moving to 30-35%. Junior roles rarely included variable components—that would change, too. In addition, a few organizations are delaying a part of the fixed compensation. It would be paid out at the end of the year as a 'longevity payment'.

"The bubble on inflated salaries," Sharma said with a pause, "has burst."

THE GIG WORKER

On Instagram, Yash Chandak has a four-word account of what he does for a living: "I move pixels around".

He is a visual artist, one who creates video content for live events such as music festivals. He worked with a design studio in Goa but left in August 2019 to work independently in Mumbai. That was a lifestyle choice. "When I started freelancing, I loved freedom. I also made more money than in the permanent job," he said. In a good month, Chandak made close to a lakh.

The gig economy, where workers find work through digital platforms, have largely come to be associated with the blue-collar, such as drivers and home services professionals like plumbers. However, there is an equally large population of the well-paid white-collar gig workers (the erstwhile freelancer) whose remuneration is variable, per project or on outcomes. Chandak is one such worker.

Covid-19, experts said, is likely to make companies contract more gig workers rather than hire employees on a fixed salary. "Reducing costs is the only way to survive. People have become very familiar with the idea of gig work. Now, companies are more open to it," Sairee Chahal, founder and chief executive officer (CEO) of SHEROES, a women-only social networking platform, said. The platform has many gigs, from home chefs and make-up artists to designers and telecallers. Covid-19 is not necessarily good news for the likes of Chandak, though. White-collar gigs always

complained of delayed payments. Cycles would worsen with the current crisis. Second, their performance-linked pay could be squeezed.

Well-funded startups have been putting pressure on telecalling rates for a few years, for instance.

Chahal said that while most Indian companies pay okay rates, startups funded by large multinational Japanese venture funds pay only Rs.1 a call. Considering one manages to make 200 calls a day, the payout would be lower than the daily wage rate

in most cities. Going ahead, rates are likely to be pushed down further, not just for telecallers but also for gig workers who create content, make data entries, and carry out search engine optimization.

The pandemic has made Chandak introspect. There are no music festivals any longer. When things get better, he is unlikely to command the pay he did in February. "It would have been nice to have a job," he said. "You know, a stable income coming in".■

Source: Mint. Date:12-05-2020

HARD TIMES AHEAD

The unemployment rate remained stable at 24 per cent during the week ended May 17. This is the same as it was in the preceding month. Halfway into the month of May, it appears that the unemployment rate is around the same level as it was in April. It remains mostly higher by a whisker. The small relaxation in the lockdown since April 20 have not had any positive impact on the unemployment rate, yet.

However, the relaxation seems to have had an impact on the labour participation rate. This has bounced back from its lowest level of 35.4 per cent in the week ended April 26. In the next week ended May 3, it sailed back to 36.2 per cent. And then shot up smartly to 37.6 per cent in the week ended May 10 and now, in the latest week of May 17 it increased to an even better 38.8 per cent.

Evidently people are coming back to the labour markets as the lockdown eases. Demand for labour is likely to have gone up as transport facilities are being organized to allow migrants to go back to their homes and zoning efforts lead to some limited and localized economic activities.

But the much-belated return of a much harrowed migrant labour to their homes is likely to complicate, significantly, the re-starting of the economy post the ever-elusive lifting of the lock-down. Uncertainty continues to prevail. The lockdown was extended. Initially, some states extended the lockdown to the end of May and then finally, the Centre announced a national lockdown till the end of May 2020.

Uncertainty of when the lockdown would lifted, the nature of economic activity post lockdown, fears of the disease, fears of lack of medical facilities, fears of sudden loss of livelihood and the traumatic experience during the lockdown is likely to keep labour away, within the safety of their homes in their villages or small towns. Enterprises of essential services that were working during the lockdown with the help of "trapped" labour have already felt the impact of this labour fleeing the moment transport was available to go home.

Restarting the economy after lifting the lockdown would therefore be a big challenge. India faces a particularly complex phenomenon because of its handling of migrant labour during the lockdown.

A persistently high unemployment rate indicates that a large proportion of labour that is willing to work is unable to find jobs. And the sharp fall in labour participation rate indicates that a lesser number of people are willing to work.

The single biggest proposition in the economic package announced by the government so far is that it proposes to give easy credit, including to the MSMEs and to street hawkers. This is unlikely to make a big positive impact. But its allocation for rural employment could make a small impact.

The government proposal that is likely to have a good impact on rural labour is the additional allocation of Rs. 400 billion to the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) for the

current year. This is in addition to the Rs. 615 billion that was announced in the budget for the year. With this, the scheme is expected to generate 3 billion person days of jobs in 2020-21. 2.65 billion person days of jobs were created from the Rs.710 billion allocated to the scheme in 2019-20.

The wage rate under the scheme was also raised earlier. Migrant labour that returns to their homes in rural India has a hope from this increased allocation to the MGNREGS and the higher wage rates.

Rural India employed about 276 million in 2019-20. But post the lockdown, this fell to 197 million in April 2020. Presumably, the additional allocations to MGNREGS would raise this 197 million by at most 10 per cent. Part of the 13 per cent increase in the allocation would go into the wage rate increase. Therefore, the additional allocation to the scheme may raise employment in rural India to around 216 million. This may provide some succor to rural India

and hopefully to the harrowed migrants and their families. But, of course, it leaves a lot to be done.

And, it leaves urban India with an unattended problem. Urban India has a higher unemployment rate of 27 per cent compared to rural India's 23 per cent. And it has a lower labour participation rate of 34 per cent compared to 41 per cent in rural India. Less than 25 per cent of urban working age population is employed. Urban India has the better educated and better skilled labour.

The government's apparent resistance to spurring demand through direct unilateral transfers to households and the extension of the lockdown implies that the economy would take a long time to recover. The future for labour is of more tapasya and more tyag. ■

The author is MD & CEO, CMIE

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[2020 (164) FLR 786]

(CHHATTISGARH HIGH COURT)

P.R.RAMACHANDRA MENON, C.J.and P.P.SAHU ,J.

Writ Petition No.153 of 2018

December 16, 2019

Between

DY.GENERAL MANAGER, (MECHANICAL MAINTENANCE/FABRICATION) BHARAT ALUMINIUM COMPANY KORBA and another

And

Smt. CHANDRIKA KHARE and others

Award-Passed by Labour Court, ordering reinstatement of employee with back wages-Set aside by Single Judge and dismissal order passed by management was upheld-Holding that the instant case was a case of no evidence at all-Order passed by Single Judge challenged-However, it is not case of no evidence-In light of evidence of FIR Panchnama and report to the Police-Delinquent employee was caught red handed by CISF official deployed in the Company-Appellant/management has proved its case as correctly observed by Industrial Tribunal-Interference made by Single Judge in setting aside the order to be interdicted and set aside –Order passed by Industrial Tribunal restored. [Para 14]

P.R. Ramachandra Menon, C.J.- The course pursued by the learned Single Judge in interdicting the verdict passed by the Industrial Tribunal (whereby the Award passed by the Labour Court ordering reinstatement of the employee with back-wages was set aside),

holding that the instant case was a case of 'no evidence' at all, is challenged on various grounds, legal as well as factual.

2. Heard Shri Narendra Kumar Vyas, the learned

STRONG REASONS MAKE STRONG ACTIONS

counsel appearing for the Appellant/Company as well as Shri Vinod Deshmukh, the learned counsel appearing for the 1st Respondent/employee.

3. The husband of the 1st Respondent was serving as an employee of BALCO i.e. the Appellant/Company and while so, he was caught 'red handed' by the Central Industrial Security Force (for short 'the CISF') deployed in the Company, for committing theft of the Company's property (6 KGs of Aluminum). A Mahazar (Panchnama) was prepared and the matter was reported by the CISF to the Police, pursuant to which, a Crime was registered setting the criminal law in motion. Simultaneously, the Management proceeded with disciplinary action by issuing charge sheet, followed by domestic enquiry. It is stated that the delinquent employee had admitted his guilt in the enquiry; based on which the proceedings were finalised and report was submitted to the Management. On the basis of the said finding, the Disciplinary Authority evaluated the facts and figures and found the delinquent employee guilty of the charges levelled against him. It was accordingly, that Annexure P/1 order was passed on 15.02.1995, putting an end to the service of the employee by way of dismissal. This was sought to be challenged by the employee through proceedings taken before the Labour Court. The validity of the enquiry was decided as the preliminary issue. The Labour Court arrived at a finding that the principles of natural justice were infringed and in the said circumstance, the enquiry was held as vitiated. Pursuant to the opportunity sought for by the Management to establish the merits of the case, the Deputy General Manager of the Company was examined as a witness and some documents were produced and marked. After analyzing the evidence, the Labour Court arrived at a finding that the charges were not proved and accordingly, an Award was passed setting aside the order of dismissal and ordered reinstatement of the employee with back wages and all consequential benefits. Met with the situation, the Award passed by the Labour Court was taken up in appeal before the Industrial Tribunal. When the appeal was pending, the delinquent employee passed away on 30.10.2003; pursuant to which the legal heir (1st Respondent herein) was brought in the party array. On appreciation of the facts and figures in the light of

the evidence adduced, the Tribunal arrived at a clear finding that the Labour Court had gone wrong in dealing with the issue and accordingly, the Award passed by the Labour Court was set aside and the dismissal order passed by the Management was upheld.

4. Then, it was the turn of the 1st Respondent to raise the challenge against the order passed by the Tribunal, thus moving this Court by filing Writ Petition No. 5289 of 2005. It was the contention of the 1st Respondent that there was violation of fundamental principles of natural justice, that no proper opportunity was afforded, and that evidence was not tendered to the requisite extent, adding that the Tribunal had gone wrong in accepting the evidence stated as given by the Deputy General Manager, more so when he had conceded before the Tribunal that he was having no direct information but for the information gathered by him from the employees and other corners. The non-examination of the author of the relevant letters/documents was stated as fatal. The Appellant/Management sought to sustain the verdict passed by the Tribunal pointing out that the provisions of the Evidence Act were not applicable to a disciplinary proceeding. The relevant rulings rendered by the Apex Court in State of Haryana & Another v. Rattan Singh, and such other judgments were also brought to the notice of the learned Single Judge.

5. Though the relevant portions of the above judgment were extracted, the learned Single Judge held that the documents were not properly proved, as authors of the letters concerned were not examined. In the said circumstance, it was held as a case of 'no evidence' at all. It was accordingly, that Annexure P/3 verdict passed by the Industrial Tribunal was set aside and the Award passed by the Labour Court as per Annexure P/2 was restored, ordering reinstatement with back-wages and all consequential benefits. This is put to challenge in this appeal.

6. The learned counsel for the Appellant/Company sought to reiterate its stand taken before the learned Single Judge pointing out that the rigor of the provisions of the Indian Evidence Act, is not applicable to disciplinary proceedings as held by the Apex Court

on many an occasion including in Rattan Singh (supra). The learned counsel also sought to place reliance on the subsequent verdict passed by the Apex Court *J.D. Jain v. Management of State Bank of India & another* and a recent judgment reported in *Management of Bharat Heavy Electricals Ltd. v. M. Mani*. It is the submission of the learned counsel that the learned Single Judge of this Court unfortunately has acted as a court of appeal against the verdict passed by the Industrial Tribunal, which is not at all correct or sustainable, as the jurisdiction which has to be exercised by this Court is only supervisory in nature, particularly being a proceeding under Article 227 of the Constitution of India.

7. Shri Vinod Deshmukh, the learned counsel appearing for the 1st Respondent submits that the challenge raised by the Appellant is not sustainable in the eye of law, as the facts and figures have been subjected to meticulous analysis by the learned Single Judge. It was quite obligatory for the Management to have proved the merits of the case by examining the witnesses concerned. Though the Deputy General Manager was examined and some documents were produced, the authors of the relevant documents were never examined and as such, the version of the Deputy General Manager has been rightly ignored by the learned Single Judge, which does not warrant interference, submits the learned counsel. Reliance is sought to be placed on the verdict passed by a learned Single Judge of the Allahabad High Court, in *Kapoor Chand Srivastava v. Chairman, Zila Parishad, Varanasi*, adding that the said decision is cited as having rendered based on the law declared by the Apex Court, in *M/s. Bareilly Electricity Supply Co. Ltd. v. Workmen and Others*.

8. At the very outset, we would like to point out that the settled position of law so far as disciplinary proceedings are concerned, is that the rules of evidence as per the Indian Evidence Act are not applicable, whereas 'preponderance of probability' is sufficient to arrive at the guilt of the delinquent employee. To quote the words of Justice V.R. Krishna Ayer as held in *Rattan Singh (supra)* which is also reiterated in the subsequent judgment in *J.D. Jain*

(supra), there is "no allergy even to a hearsay evidence". This being the position, the degree of proof that is required to arrive at the guilt of the delinquent employee stands entirely on a different pedestal and it cannot be examined using the 'glasses' required in a criminal proceeding to punish a person/accused, where the offence has to be proved beyond any reasonable doubt. The said position has been reiterated by the Apex Court as per the verdict passed in *Kapoor Chand Srivastava (supra)*. This being the position, the approach itself is entirely different so far as a disciplinary proceeding is concerned.

9. Coming to the evidence on record, it is to be noted that the delinquent employee was caught 'red handed' by the CISF official deployed in the Appellant/Company, which is a public sector undertaking. It is the safety and security of the Company, that matters for the CISF deployed in the establishment as above. There is no dispute that each and every person entering and leaving the premises of the Company will be subjected to test the identity and such other steps including 'frisking' to see whether anything is stealthily being removed from the Company. It was in the course of such exercise, that the 'CISF' came across the serious misconduct committed by the delinquent employee in stealing nearly 6 KGs of Aluminum, in turn, leading to seizure of the material object. The employee was detained and a Mahazar (Panchnama) was prepared by none other than the CISF official. It was the 'CISF' official who reported the matter to the Police as to the offence involved under the relevant provisions of law; based on which investigation was initiated by the Police after registering the Crime. That apart, the Management had also produced the relevant document submitted from the part of the employee in the course of the enquiry proceedings, virtually admitting his guilt. Obviously, the instance was covered by the documentary evidence such as Seizure Mazahar, FIR and such other incriminating circumstances coupled with the statement given by the CISF official. The delinquent employee subsequently sought to disown his signature in the letter admitting the guilt and this has been given undue weightage by the Labour Court and also by the learned Single Judge.

10. The Appellant/Company examined the Deputy General Manager who deposed in categorical terms

that he got the information with regard to the facts and figures as informed by the other employees and from such other sources. This has been referred to in paragraphs 6 and 7 of Annexure P/3 order dated 17.08.2005 passed by the Tribunal. We find it appropriate to have the said paragraphs extracted herein for easy reference:

11. What has been spoken by the Deputy General Manager of the Company is the factual input obtained to him. It was not the case for the Management that the Deputy General Manager had witnessed the stealing of the material object by the delinquent employee, as it was brought to light by the 'CISF official', followed by such other steps as to reporting of the matter to the Police by the CISF, leading to registration of FIR. Whether these pieces of evidence could have been simply brushed aside, and can it be called as a case of 'no evidence' at all, as held by the learned Single Judge, is the question to be considered. The answer, according to us, can only be an emphatic 'No', for the reasons noted below.

12. The observations made by the learned Single Judge in paragraph 9 are only in the following terms:

"9. Reverting to the facts of the present case, it would appear that the Industrial Court has mainly relied upon the documents Ex.D/1 to D/4 to set aside the order of the Labour Court. Ex.D/1 is the letter written by CISF to the Executive Director (Works), BALCO, Korba on 19.11.94 informing that the deceased employee was caught red handed with 6 kg. of aluminium balit. Neither author of the document nor any other person to prove the contents of this document have been examined. Likewise, Ex. D/2 is the First Information Report lodged by O.P. Pandey, CISF, Balco, however, he has not been examined. Likewise, Ex.D/3 is seizure memo, which has also not been proved and Ex.D/4 is statement of the deceased employee, who in his evidence has rebutted that it is not his signature and as such, this is a case of no

evidence. The self-serving statement of Shri Virendra Narayan, who is Deputy Manager of BALCO Company who has clearly stated that he has not lodged the report and he has only got information from the other officers/employees."

13. The delinquent employee was caught 'red handed' by the 'CISF' official deployed in the Company, as mentioned already. This led to the proceedings including preparation of 'Panchnama' (Exhibit D-3) and the information given to the Police, leading to registration of FIR, as per Exhibit D-1 document. The CISF deployed in the Company was not an employee of the Management/Company and was a third person. There was no case for the delinquent employee at any point of time, that the CISF was having any ill-will against the delinquent employee or that he was virtually trapped against the actual facts and figures. Similarly, there is no case for the delinquent employee that there was any mala fide intention on the part of the Management/Employer in booking the delinquent employee. The fact that the delinquent employee was caught 'red handed' by the CISF official who was discharging his duties and further that the registration of the criminal case was on the basis of the report submitted by the CISF official and the statement obtained from the said official are all borne out by the records, which were produced before the Labour Court and it was deposed accordingly by the Deputy General Manager of the Appellant/Company by getting himself examined before the Labour Court. Though he was stated as cross-examined by the delinquent employee, nothing could be brought out to discredit the version given by Deputy General Manager in relation to the source of the said documents and as to the sequence of events. This being the position, the evidence tendered by the Deputy General Manager before the Labour Court and the documents produced in support of the same were very much valid pieces of evidence to be taken for arriving at the guilt of the delinquent employee in respect of the disciplinary proceedings, where the Labour Court has gone wrong. This was corrected by the learned Industrial Tribunal by passing Annexure P/3 order; but when the matter came up before the learned Single Judge of this Court,

A GOOD MAN DOES NOT ARGUE, HE WHO ARGUES IS NOT A GOOD MAN

the position got turned upside down, unfortunately without properly observing or appreciating the worth of a 'CISF official' who caught the delinquent employee 'red handed' and prepared the 'Panchnama' and also reported the matter to the Police, leading to registration of FIR.

14. After hearing both the sides and after going through the materials on record, we are of the view that the finding and reasoning given to have interdicted Annexure P/3 order passed by the Industrial Tribunal is not correct or sustainable. 'Misplaced sympathy is an evil'. We find support from the rulings rendered by the Apex Court in Union of India & Others v. J. Ahmed, paragraph 11} where it has been held that no 'mens rea' is necessary to hold the delinquent employee guilty; Davalsab Hussainsab Mulla v. North West Karnataka Road Transport Corporation, paragraph 13} and the judgment rendered by a Division Bench of Kerala High Court in Kerala Public Service Commission & Another v. Letha. S. OP (KAT) No. 94 of 2017 (Z), dated 30.06.2017} authored by one of us (P.R. Ramachandra Menon). We hold that the Appellant/ Management has proved its case as correctly observed by the Industrial Tribunal while setting aside Annexure P/2 Award passed by the Labour Court. We find that the interference made by the learned Single Judge in

setting aside Annexure P/3 order requires to be interdicted. It is ordered accordingly.

15. Coming to the remaining aspect, which may be having some relevance, it is with regard to the payments already effected by the Appellant/ Management in the course of the proceedings. It is pointed out by the learned counsel for the Appellant/ Company, that during pendency of the appeal before this Court, a total sum of Rs. 2,10,080/- has already been released to the 1st Respondent in terms of Section 65(3) of the Chhattisgarh Industrial Relations Act, 1960 (which is akin to Section 17-B of the Industrial Disputes Act, 1947). The learned counsel submits that the Gratuity payable in respect of the service of the employee was also paid to him. We make it clear that the amounts already satisfied as above need not be recovered. The verdict passed by the learned Single Judge having been set aside and Annexure P/3 order passed by the Industrial Tribunal having been restored, we find it clear that no further amount is payable to the 1st Respondent towards the arrears of salary/back wages or under any other heads.

16. The appeal stands allowed. No costs.

Appeal Allowed. ■

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