form of the action or the procedure followed; nor do I think it is relevant to determine what operated in the mind of a particular officer. The real hurt does not lie in any of those things but in the consequences that follow and, in my judgment, the protections of Art. 311 are not against harsh words but against hard blows. It is the effect of the order alone that matters; and in my judgment, Art. 311 applies whenever any substantial evil follows over and above a purely "contractual one". I do not think the article can be evaded by saying in a set of rules that a particular consequence is not a punishment or that a particular kind of action is not intended to operate as a penalty. In my judgment, it does not matter whether the evil consequences are one of the "penalties" prescribed by the rules or not. The real test is, do they in fact ensue as a consequence of the order made?

I would allow the appeal with costs.

BY THE COURT.—In accordance with the opinion of the majority, the appeal is dismissed with costs.

Appeal dismissed.

PATNA ELECTRIC SUPPLY CO., LTD., PATNA.

v.

BALI RAI & ANOTHER.

(BHAGWATI, B. P. SINHA, JAFER IMAM, J. L. KAPUR and GAJENDRAGADKAR, JJ.)

Industrial Dispute—Discharge of employee—Permission granted by Industrial Tribunal—Powers of Labour Appellate Tribunal to interfere—Question of law—Appealability—Industrial Disputes Act, 1947 (14 of 1947), s. 33—The Industrial Disputes (Appellate) Tribunal Act, 1950 (48 of 1950), s. 7.

The appellant made an application before the Industrial Tribunal under s. 33 of the Industrial Disputes Act, 1947, for permission to dismiss the respondents, its employees, on the ground of misconduct under cl. 17(b)(viii) of the appellant's Standing Orders, but subsequently, on a reconsideration of the facts, made another application praying instead

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for permission to discharge the respondents under cl. 14(a) of the Standing Orders. The Industrial Tribunal found that the second application was *bona fide* made by the appellant with the honest motive of exercising its right to discharge the respondents instead of visiting upon them the penalty of dismissing them, and granted the appellant permission on payment to the respondents of one month's pay in lieu of notice. The Labour Appellate Tribunal, on appeal, was of the opinion that having once alleged misconduct against the respondents the appellant could not be allowed to adopt the expedient of terminating their services by giving notice for the requisite period, by means of a fresh application, and after considering whether the appellant had made out a case under cl. 17(b)(viii) of the Standing Orders, came to the conclusion that the respondents had not been guilty of any misconduct, and held that the Industrial Tribunal erred in granting the permission to discharge the respondents. On appeal to the Supreme Court:—

Held, that in an application under s. 33 of the Industrial Disputes Act, 1947, the relevant consideration was whether the employer was guilty of any unfair labour practice or victimisation, and unless the Tribunal came to a conclusion adverse to the applicant it would have no jurisdiction to refuse the permission asked for to discharge the employee. Accordingly, in view of the finding of the Industrial Tribunal that the application was *bona fide*, no question of law arose out of its order, and the Labour Appellate Tribunal erred in entertaining the appeal.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 142 of 1956.

Appeal by special leave from the judgment and order dated September 13, 1954, of the Labour Appellate Tribunal of India (Calcutta Bench) in Appeal No. Cal-87 of 1953.

H. N. Sanyal, Additional Solicitor-General of India, J. B. Dadachanji, S. N. Andley and *Rameshwar Nath*, for the appellants.

P. K. Chatterjee, for the respondents.

1957. November 5. The Judgment of the Court was delivered by

Bhagwati J.

BHAGWATI J.—This appeal with special leave arises out of an application made by the appellant to the Industrial Tribunal, Bihar under s. 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), seeking permission to discharge the respondents from its employ.

The respondents were in the employ of the appellant and were staying in a two storeyed house in the city of Patna which had been rented by the appellant for housing its workmen. On November 20, 1952, an occurrence took place in the said house wherein the respondents were involved. Written reports of the said occurrence were sent on November 21, 1952, to the appellant's Chief Engineer and the respondents were placed under suspension the same day. An industrial dispute was then pending between the parties *i.e.*, the appellant and its workmen before the Industrial Tribunal, Bihar, and the appellant therefore made an application to the said Tribunal under s. 33 of the Act for permission to dismiss the respondents on the ground of misconduct as per cl. 17(b)(viii) of the appellant's Standing Orders. On November 27, 1952, the respondents also made an application before the said Tribunal under s. 33A of the Act *inter alia* on the ground that their suspension by the appellant as aforesaid was a breach of s. 33 of the Act.

On December 6, 1952, the appellant made an application before the said Tribunal stating that on a reconsideration of the facts of the case of the respondents the original prayer for permission to dismiss the respondents was not being pressed, and for the ends of justice it would be sufficient if the appellant was granted permission to discharge the respondents under cl. 14(a) of the Standing Orders instead of the original prayer for dismissal under cl. 17(b)(viii) thereof. This application was resisted by the respondents. The Industrial Tribunal, however, entertained the same and after hearing the parties duly made its award on May 14, 1953 dismissing the respondents' application under s. 33A of the Act and granting the appellant permission to discharge the respondents from its employ with effect from the date of the order on payment to the respondents of one month's pay in lieu of notice within 15 days therefrom.

The respondents carried an appeal against the said order of the Industrial Tribunal granting the appellant's application under s. 33 of the Act before the Labour Appellate Tribunal of India, Calcutta. A

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preliminary objection was taken on behalf of the appellant before the Labour Appellate Tribunal that no substantial question of law was involved and as such the appeal was not maintainable. The Labour Appellate Tribunal was of the opinion that the appellant had alleged misconduct against the respondents and could not be allowed to adopt the expedient of terminating their services by giving notice for the requisite period or payment of salary in lieu of notice and that the Industrial Tribunal, therefore, ought not to have entertained the application for amendment of the prayer of the original application in which the appellant wanted to dismiss the respondents for misconduct. This according to the Labour Appellate Tribunal was a substantial question of law and it therefore entertained the appeal. The Labour Appellate Tribunal thereafter considered whether the appellant had made out a case under cl. 17(b)(viii) of the Standing Orders and came to the conclusion that the respondents had not been guilty of any misconduct within the meaning of that clause and that therefore the order made by the Industrial Tribunal granting permission to the appellant to terminate the services of the respondents was liable to be set aside. In so far, however, as after obtaining the permission from the Industrial Tribunal the appellant had given notice of discharge to the respondents, the Labour Appellate Tribunal expressed its inability to give the respondents any substantial relief either in the shape of reinstatemement or compensation.

The appellant has come up in appeal before us against this order of the Labour Appellate Tribunal.

Shri H. N. Sanyal, appearing for the appellant, has urged in the fore-front the contention that no appeal from the order of the Industrial Tribunal lay to the Labour Appellate Tribunal under s. 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950. He contended that the said order was not a "decision" within the meaning of that expression in s. 7 and even assuming that it was so, the appeal neither involved any substantial question of law nor was it a decision in respect of any of the matters specified in sub-s. (1)

(b) of that section. The answer of Shri P. K. Chatterjee on behalf of the respondents was that the action of the appellant in the matter of the termination of the services of the respondents was punitive in character, that the discharge of the respondents for which permission was sought by the appellant was a punitive discharge, that such discharge was by reason of the alleged misconduct of the respondents falling within cl. 17(b)(viii) of the Standing Orders and not within cl. 14(a) thereof and that the substantial question of law which arose in the appeal was whether the appellant could be allowed to adopt the expedient of terminating the services of the respondents, without going through the procedure of submitting a charge-sheet to the respondents and holding a proper enquiry in the matter of those charges, by merely giving notice for the requisite period of payment of salary in lieu of notice and thus resorting to cl. 14(a) of the Standing Orders instead of cl. 17(b)(viii) of the same. The other answer made by Shri P. K. Chatterjee was that having regard to the definition of the term "retrenchment" to be found in s. 2(oo) of the Act the discharge of the respondents by the appellant really amounted to retrenchment and retrenchment being one of the matters specified in sub-s. (1)(b) of s. 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, the respondents had a right of appeal to the Labour Appellate Tribunal.

It is necessary, therefore, to appreciate what was sought to be done by the appellant when it made the application before the Industrial Tribunal on December 6, 1952. This application has been described by the Labour Appellate Tribunal as an application for amendment of the original application which had been filed by the appellant on November 21, 1952, for permission to dismiss the respondents from its employ as per cl. 17(b)(viii) of the Standing Orders. It must be noted, however, that what the appellant purported to do by its application of December 6, 1952, was, in effect, to substitute another application asking for permission to discharge the respondents from its

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employ under cl. 14(a) of the Standing Orders, thus abandoning the relief which it had prayed for in the original application. The applicaton dated December 6, 1952, was thus, in substance, a new application made by the appellant to the Industrial Tribunal, no doubt relying upon the facts and circumstances which were set out in the original application but asking for the permission of the Industrial Tribunal to discharge the respondents from its employ under cl. 14(a) of the Standing Orders instead of dismissing them from its employ under cl. 17(b) (viii) thereof. We do not see how it was not competent to the Industrial Tribunal to allow the appellant to do so. If the appellant had been actuated by any oblique motives and wanted to evade the consequences of its not having held a proper enquiry after submitting a charge-sheet to the respondents one could have understood the criticism made by the Labour Appellate Tribunal in regard to the same. The Industrial Tribunal, however, expressly recorded the finding that the application for leave to discharge the respondents from its employ was *bona fide* and what the appellant did by making the application dated December 6, 1952, was actuated by an honest motive of exercising its right to discharge the respondents under cl. 14(a) of the Standing Orders instead of visiting upon the respondents the penalty of dismissing them from its employ under cl. 17(b) (viii) thereof. The discharge of the resepondents was a discharge *simpliciter* in exercise of the rights of the employer under cl. 14(a) of the Standing Orders and was not a punitive discharge under cl. 17(b)(viii) thereof and if it was merely a discharge *simpliciter*, then, no objection could be taken to the same and the appellant would be well within its rights to do so, provided, however, that it was not arbitrary or capricious but was *bona fide*. The only question relevant to be considered by the Industrial Tribunal would be that in taking the step which it did the appellant was not guilty of any unfair labour practice or victimization. If the Industrial Tribunal did not come to a conclusion adverse to the appellant on these counts, it would have no jurisdiction to refuse

the permission asked for by the appellant. Once the Industrial Tribunal was of opinion that the application dated December 6, 1952, and the discharge of the respondents for which the permission of the Industrial Tribunal was sought were in the honest exercise of the appellant's rights, no question of law, much less a substantial question of law could arise in the appeal filed by the respondents against the decision of the Industrial Tribunal and the Labour Appellate Tribunal was clearly in error when it entertained the appeal.

In view of the above finding, we do not propose to deal with the contention that the order passed by the Industrial Tribunal under s. 33 of the Act is not a "decision" within the meaning of that term in s. 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950.

The argument that the discharge of the respondents though patently it was a discharge *simpliciter* was, in substance, retrenchment within the meaning of the definition contained in s. 2(oo) of the Act is equally untenable, for the simple reason that the term "retrenchment" was for the first time defined in the manner in which it has been done by an Ordinance promulgated in October 1953 which was followed by Act 43 of 1953 which was published in the Gazette of India on December 23, 1953. The Industrial Tribunal made its order granting the permission under s. 33 of the Act on May 14, 1953, so that, this definiton of the term "retrenchment" could not apply to the facts of the present case. If, therefore, at the relevant period the discharge *simpliciter* could not be deemed to be retrenchment of the respondents by the appellant, the decision of the Industrial Tribunal could not be said to be one in respect of any of the matters specified in sub-s. (1)(b) of s. 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950. In that view also no appeal could lie from the decision of the Industrial Tribunal to the Labour Appellate Tribunal.

It must be observed that neither of those two points was taken by the respondents either in the proceedings before the Industrial Tribunal or the Labour

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Appellate Tribunal nor was either of them mentioned in the statement of case filed by the respondents in this Court. They were taken for the first time in the arguments advanced before us by Shri P. K. Chatterjee. We have, however, dealt with the same because we thought that we should not deprive the respondents of the benefit of any argument which could possibly be advanced in their favour.

We are, therefore, of opinion that no appeal lay from the decision of the Industrial Tribunal to the Labour Appellate Tribunal, that the Labour Appellate Tribunal had no jurisdiction to interfere with the order made by the Industrial Tribunal granting the appellant permission to discharge the respondents under s. 33 of the Act and that the decision of the Labour Appellate Tribunal is liable, to be set aside.

We accordingly allow the appeal, set aside the decision of the Labour Appellate Tribunal and restore the order made by the Industrial Tribunal, Bihar, on date May 14, 1953. The appellant will be entitled to its costs of this appeal from the respondents.

Appeal allowed.

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November, 5

THE SREE MEENAKSHI MILLS, LTD.

v.

THEIR WORKMEN

(and connected appeals)

(BHAGWATI, JAFER IMAM and GAJENDRAGADKAR JJ.)

Industrial Dispute—Bonus—Available surplus—Determination of—Depreciation allowable under Income-tax Act, if can be deducted as prior charge—Part of depreciation claimed disallowed—Provision for higher amount of income-tax, if can be allowed—Appellate Tribunal's power of review.

The workmen demanded bonus for the year 1950-51 on the allegation that the employers had made profits during the relevant year. The employers resisted the demand on