M. A. Sathar Sayeed, J.

P. Narasimha Chetty (died) *v.*
Narayana Chetty.

18*th October,* 1982.

C.R.P. Nos. 4002 of 1981, etc.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) *(as amended by Act XXIII of* 1973), *section* 23 (3)—*Appellate authority constituted under the Act —Power to remand matter to the Rent Controller.*

The only question involved in all these cases was whether the appellate authority under section 23 (3) of the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) (as amended by Act XXIII of 1973) has got power to remand and remit a case to the Rent Controller for fresh disposal if it finds that some evidence is lacking or is necessary for the disposal of the case.

Held: A catena of cases on the interpretation of section 23 (3) of the Tamil Nadu Act (XVIII of 1960) clearly brings forth, that the appellate authority, after calling for the records from the Rent Controller should conduct such further enquiry either personally or through the Controller and shall decide the appeal. The wording "shall decide the appeal" clearly shows that the power of the appellate authority is to decide the appeal by himself and not to remit the matter for fresh disposal as it has been done in the instant case.

Held further, following the Bench decision in *Rangaswami Naidu* v. *The Second Judge; Court of Small Causes, Madras,* (1949) 1 M. L. J. 24 (N.R.C.), the appellate authority under the Tamil Nadu Act XVIII of 1960 as amended, has no power to remit the matter to the Rent Controller for fresh disposal.

In the instant revision the appellate authority finds that some evidence is necessary for the disposal of the appeal; it can hold further enquiry as it thinks fit either personally or through the Controller. That is to say the appellate authority can hold further enquiry or can direct the Controller to hold it and submit the result of enquiry to him.

R.S. ——— *Petition allowed.*

V. Balasubrahmanyan, J.

Vinod Mothilal *v.*
The State of Tamil Nadu.

7*th July,* 1982.

C.R.P. No. 2714 of 1981.

Civil Procedure Code (V of 1908), *Order* 1, *rule* 9—*Mis-joinder and non-joinder of properties—Government statutory tenant in respect of a building—Building actually occupied by several allottees from State Government—Suit for arrears of rent—State Government alone impleaded as party defendant—Suit, whether bad for non-joinder of parties.*

The suit was for recovery of arrears of rent from the Government, which was a statutory tenant of the plaintiff's building. The building was actually occupied by several allottees from the State Government. As and when the vacancies arose, the vacancies were intimated by the plaintiff to the Accommodation Controller. According to the plaintiff the rents for the premises had not been paid to him and therefore he was entitled to recover the rents. In the suit for recovery, the plaintiff had impleaded the State Government and asked for relief as against it. None of the allot-

tees in actual occupation of the plaintiff's premises had been impleaded as party-defendant. An issue was raised that the suit was bad for non-joinder of the allottees as party-defendants. The issue was tried as a preliminary issue and it was held that the suit was bad for non-joinder of the allottees.

On revision to the High Court it was

Held: The suit is a simple one laid for the recovery of rent in arrears and when it is recognised that the State Government alone, and not any other person was a statutory tenant then it follows that it is only the State Government which can be a proper and necessary part to the suit for rent. That the State Government may have to realise the money from the allottees would involve a separate cause of action in itself in which the landlord would be least interested, since it is a matter which would strictly concern the Government on the one hand and the allottees on the other. In those circumstances, the allottees can, by no means, be regarded either as necessary parties or as proper parties to the present suit. The issue in question is answered in favour of the plaintiff. The suit as laid is perfectly competent and is not bad for non-joinder of parties.

K. Chandramouli and *V. Ramesh,* for Petitioner.

T. N. Vallinayagam, for Additional Government Pleader, for Respondent.

R.S. ——— *Petition allowed.*

S. Nainar Sundaram, J.

Nagammal *v.*

Sarathambal.

30th September, 1982.

C.R.P. No. 1199 of 1982.

(A) *Civil Procedure Code* (*V of* 1908), *Order* 6, *rule* 17—*Amendment of the plaint—Suit for partition—Preliminary decree passed—Application for passing final decree—Commissioner's report obtained — Application for amending the plaint on the basis of Commissioner's report to introduce true items—Application allowed — Defendant not served with copy of the amended plaint—No opportunity given to file additional statement—Petition by defendant to file additional written statement—Petition dismissed—On revision order set aside.*

(B) *Civil Procedure Code* (*V of* 1908), *section* 115—*Substantial injustice caused to the parties—Interference in revision permitted.*

It is fundamental that where a pleading is allowed to be amended, an opportunity should be given to the opposite party to meet the new case by filing additional written statement, and there should be a further testing of the cause of the parties on the amended pleadings. The plaint in the present case was amended only subsequently and the defendants craved permission to file an additional written statement. The fact that even anterior to the amendment of the plaint and the adherence to the legal process, pursuant thereto, there was amendment of the preliminary decree following the amendment of plaint and adjudication on amended pleadings, the position had been altered and great hardship and injustice had resulted to the defendants by this unorthodex, illegal and highly irregular process. The powers under section 115 of the Civil Procedure Code, are intended to be exercised with a view to subserve the ends of justice and technicalities need not stand in the way. The order of the lower Court was set aside and the revision was allowed.

T. R. Ramachandran, for *Jan* and *San,* for Petitioner.

T. Vadivel, for Respondent.

R.S. ——— *Petition allowed.*

S. Swamikkannu, J.

State of Bank of India,
Ootacamund *v.*
Sampoornam Ammal.

7th July, 1982.

C.R.P. No. 2126 of 1981.

(A) *Indian Contract Act (IX of* 1872), *section* 128—*Limitation Act (XXXVI of* 1963), *section* 19—*Liability of the surety—Co-extensive with that of the principal debtor—Acknowledgement of liability by the principal debtor — No proof of payment being made on behalf of the surety also—The same cannot be used against the surety to save limitation.*

(B) *Provincial Small Cause Courts Act (IX of* 1887), *section* 25—*Scope.*

The first respondent (first defendant) a Harijan illiterate lady applied to the State Bank, Ootacamund for a loan of Rs. 1,000 for running a petty shop. The loan was sanctioned. The second respondent (second defendant) stood guarantee for the due repayment of the loan with interest. He executed on 28th August, 1975, the contract of guarantee reciting *inter alia* that in consideration of the Bank having agreed at his request to grant the first defendant (borrower) accommodation by way of cash-credit to such an amount from time to time as the Bank in its discretion shall think proper, on condition that such cash credit shall to the extent of Rs. 1,000 and interest be secured by the promissory note thereinafter referred to, he had delivered to the Bank the promissory note dated 28th August, 1975, for Rs. 1,000 with interest, payable on demand made by the borrower in his favour and for sufficient consideration to him, endorsed by him to the Bank or order, the promissory note being intended as a guarantee to the extent of Rs. 1,000 and interest on the balance from time to time payable to the bank by the borrower and remaining unpaid on account of the said cash credit which for purposes of the guarantee shall be considered continuing notwithstanding it may in the meantime, at any time or from time to time be brought to credit until notice in writing that the same was closed is given by the bank to him on the understanding that the bank shall be at liberty to take steps to enforce payment of the promissory note at any time after notice in writing demanding payment for three days after the posting of the notice. The second respondent agreed that failure to give such notice shall in no way release him from liability under the promissory note. He also agreed that the cash-credit account shall be made up with interest on the daily balance thereof and the interest payable on the promissory note shall be applied to the payment and satisfaction of the interest accruing upon so much of the moneys becoming payable to the bank in respect or the cash-credit as was secured by the promissory note etc. The guarantee document was in the omnibus printed form with its different recitals with blank spaces left to fill in details, like the names of the parties, the amount concerned etc. The first respondent (first defendant) had acknowledged in writing liability for the debt on 23rd June, 1978. She had however failed to repay the loan in monthly instalments of Rs. 50 as stipulated by her. The accounts were kept running till December, 1979. A registered notice was sent to her on 19th September, 1980. A sum of Rs. 753-60 was due to the Bank and a suit for its recovery was brought against both the respondents (defendants). The guarantee document of 28th August, 1975, executed by the second respondent (second defendant) had not been renewed or extended in time as regards his liability with respect to the account was an open, current and mutual decreed the suit against the first respondent but dismissed it against the second respondent as time-barred holding that even though the principal debtor had acknowledged the debt within the period of limitation so as to give a fresh starting point of limitation against her the same cannot be used as against the surety for the purpose of saving limitation. On revision to the High Court it was contended on behalf of the bank that limitation would not start from the date of the promissory note or the date of the guarantee; the guarantee was not independent of the liability of the principal debtor and was a continuing guarantee; the account was an open, current and mutual account which was kept running till December, 1979; limitation should be computed only from 31st December, 1979; and limitation will run against the guarantor only after demand had been made on the borrower and default is made.

Held: Under section 25 of the Provincial Small Cause Courts Act, 1887, the general principle followed is that no interference in revision can be resorted to on purely technical grounds. The High Court should not interfere unless it appears that some substantial injury is done to the aggrieved party; the jurisdiction is discretionary and cannot be exercised except to remedy injustice. Where it is clear that a question of fact was gone into by the Judge and the decision is apparently in accordance with the evidence the High Court will not usually interfere in revision merely because it is possible to take a different view on the evidence. In a revision under section 25, a plea of limitation has to be treated as any other plea of law. The High Court will not interfere in revision with the decision of the Court below though erroneous on a point of limitation when no injustice has resulted thereby.

The concept of co-extensive liability attached to the surety cannot be attracted to the guarantor in the instant case. The provisions of the Limitation Act will have to be given effect to and the period of limitation cannot be extended or held to be altered by any provision in the Indian Contract Act. The rigour with which the limitation period is expected to be computed with reference to any transaction must be given effect to even in cases of banking transactions.

So far as the second defendant is concerned, the suit has not been filed within three years from the date of the promissory note or from the date of the guarantee document and so it has necessarily to be held that the suit as against the second defendant is barred by limitation.

Merely on the ground that section 128 of the Contract Act lays down that the liability of the surety is co-extensive with that of the principal debtor and so long as the liability of a principal debtor is subsisting, the surety cannot be held liable. It is well-settled that section 128 of the Indian Contract Act must be read along with the Limitation Act for the purpose of determining the question as to whether the claim as against the surety is barred or not. It is also well laid down that the liability of the surety arises immediately on execution of the guarantee and the limitation runs from the date and that the suit against the surety has got to be instituted within three years from that date or at least from the date of execution of the promissory note by the principal debtor and that the payment of money by the principal debtor or the acknowledgment of the debt by the principal-debtor before the expiry of the period of limitation would not give a fresh starting point of limitation against the surety unless it be that the payment was also made on behalf of the surety. In the instant case, there is no such proof of any payment having been made on behalf of the surety so as to give a fresh starting point for the limitation period. In the instant case even though the principal-debtor has acknowledged the debt within the period of limitation so as to give a fresh starting point of limitation, the same cannot be used as against the surety, the second defendant herein, for the purpose of saving limitation. Therefore the suit as against the second defendant is clearly barred by time.

Desirability of the contract of guarantee entered into between the bank and the person who stands as surety being reduced to writing in every case instead of using a printed form and the contents thereof made known to the principal debtor pointed out.

A. R. Ramanathan, for Petitioner.

A. K. Sriraman, for Respondents.

R.S. ——— *Petition dismissed.*

K B. N. Singh, CJ. and
S. Padmanabhan, J.

Sampoorna Ammal *v.*
Asokan.

24th January, 1983.

L.P.A. Nos. 70 and 71 of 1978.

Hindu Law—Joint family property—Power of the manager to alienate — Alienation for inadequate consideration—Effect—Sale whether valid—Duty of the alienee.

It is now well-settled that the manager or kartha of a Hindu joint family has power to alienate the joint family property provided the alienation is made for legal necessity or for the benefit of the estate. A Hindu father has also the special power to sell or mortgage ancestral property including the interest of his sons to discharge a debt contracted by him for his own personal benefit and such alienation will be binding on the sons provided the debt was antecedent to the alienation and it was not incurred for any immoral purpose. Antecedent debt means a debt which is antecedent in fact as well as in time. In other words the debt must be independent of and not part of the transaction impeached. A borrowing made on the occasion of the execution of a mortgage cannot be said to be an antecedent debt. It is equally clear that an alienation by the father of a Hindu joint family neither for legal necessity nor for the payment of an antecedent debt does not bind the son's interest in the property. The burden of proof is on the alienee. Where a manager or a father in the Hindu joint family alienates joint family property the alienee is bound to inquire into the necessity for the sale and the burden lies on him to prove either that there was legal necessity in fact or the alienation by the father was for the discharge of an antecedent debt or that he has made proper and *bona fide* enquiry as to the existence of such necessity. It is also clear that the purchaser is not bound to see that the money advanced by him was actually applied to meet the necessity. This is on the principle that the purchaser can rarely have the means of having control and directing the actual application of the money. It is also equally well-settled that where the existence of the family necessity is established the manner in which it should be met and the manner of the application of the money for the purpose of meeting the necessity is a matter entirely for the manager to decide, and so long as he does it honestly in the interests of the family the fact that another person in the position of a manager could have or would have made a better arrangement for meeting the necessity is not an argument available to invalidate the actual arrangement made by the manager. Of course, if the challenge to the alienation is on the ground that the antecedent debts incurred by his father, were tainted by immorality, it is for the sons to prove that the antecedent debts were immoral and that the purchaser had notice that they were so tainted.

S. Sivasubramaniam, for Appellant.

R. Gandhi, for Respondent.

R.S. ——— *Appeal dismissed.*

V. Balasubrahmanyan, J.

Konammal *v.*

K. Balasubramaniam.

18*th January,* 1983.

C.R.P. No. 653 of 1978.

Civil Procedure Code (V of 1908), *section* 50 *and Order* 21, *rule* 22—*Mortgage decree — Execution against the defendants — Pending execution first defendant dying — Execution petition closed—Legal representatives impleaded as parties—Notice of execution ordered to all—Some of them not served—Sale effected —Execution Court has no jurisdiction to order sale.*

The revision arose out of proceedings in execution of a mortgage decree for sale against three defendants. After the decree, the decree-holder filed an execution petition for bringing the mortgaged property to sale Pending execution petition the first defendant died. The execution petition was closed. Legal representative of the deceased first defendant were impleaded as parties. In the fresh execution petition against the legal representatives, notice was ordered by the executing Court against all of them. The records showed except three of the legal representatives, the others were not served. The Court proceeded to settle the proclamation fixing the upset price for the properties to be sold. It also ultimately passed an order for sale. Pursuant to the order of the Court, the properties were sold. Meanwhile, one of the surviving judgment-debtors filed an application to set aside the sale; but it was dismissed for default and the sale was confirmed and the sale certificate was issued to the purchaser. A revision was filed challenging the execution sale.

Held: The text of the relevant provisions in the Code as well as the decisions of the Court are clear that the non-service of notice on some of the legal representatives of the deceased (first defendant) wholly vitiates the court—auction sale. The decree-holder having impleaded all the legal representatives of the deceased first defendant as parties, should properly have proceeded to serve them in the manner prescribed by the Code for service of notice. When notices have not been served at all or not served properly against some of the legal representatives this shortcoming in the notice cannot be sought to be argued away on the theory that those who had been served can be taken to represent the entire estate including the interests of those who had not been served.

The result is that the execution Court had no jurisdiction whatever to proceed to order the sale of the mortgaged property without having served notice on the legal representatives impleaded as respondents. It follows that the sale must be set aside as a nullity. Since the entire execution proceedings are null and void, the Court-auction-purchaser's *bona fides* or want of knowledge on his part of the absence of notice to all the legal representatives, cannot save the sale in his favour. Accordingly the sale must be declared as null and void absolutely.

S. Gopalaratnam, for Petitioner.

N. Sivamani, for Respondents.

R.S. ——— *Civil revision petition allowed.*

P. R. Gokulakrishnan and
S. Nainar Sundaram, JJ.

Brindha Muthuswamy *v.*

The Tamil Nadu Small Industries Development Corporation Ltd., by its Manager, Industrial Estate.

1*st March,* 1983.

W.A. No. 44 of 1983.

(A) *Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act,* 1975 (*I of* 1976), *sections* 4, 5 *and* 6—*Scope and applicability.*

(B) *Constitution of India* (1950), *Article* 226 *—Writ petition against Tamil Nadu Small Industries Development Corporation Ltd., maintainable.*

Notice was issued to the appellant as per rule 3 of the Rules, under Form 'A' calling upon her to show on or before ten days of the date of the issue of the notice as to why an orden

of eviction should not be made under sub-section (1) of section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act (I of 1976). To this notice the appellant sent a reply alleging that her tenancy had been regularised, that she was in occupation after regularising her occupation and that the authorities must drop the proceedings against her. She had also requested for a personal hearing to represent her case. Subsequent to this reply, a notice was issued under Form B as per rule 4 of the Rules intimating the appellant that an enquiry will be held and directing her to attend the enquiry and produce evidence. Accordingly, the enquiry was conducted and the report as to the state of affairs as on that day was recorded. Subsequently a notice as per Form 'C' prescribed under rule 6 of the Rules was issued. This notice was questioned in the writ petition which was dismissed as not. maintainable. On appeal,

Held: In view of the decision reported in the *General Manager, United India Fire and General Insurance Company Ltd.* v. *A. A. Nathan,* 1981 Lab. I. C. 1076: (1980) 1 Lab.L.J. 369, the writ petition is maintainable. There is nothing in section 5 of the Act which refers to the notice contemplated under rule 6 of the Rules. On the other hand section 5 of the Act is clear and categoric to the effect that if after the issue of notice under section 4 of the Act and after giving a reasonable opportunity of being heard, the estate officer is satisfied that the premises was unauthorisedly occupied, he may make an order of eviction for reasons to be recorded therein. It is only subsequent to the order of eviction and taking possession under sub-section (5) of the Act, the disposal of the property left on the public premises by unauthorised occupants arises. Section 5 of the Act definitely contemplates: (1) notice under section 4 of the Act; (2) recording of evidence that may be produced in support of the notice under section 4 of the Act; (3) giving reasonable opportunity to the unauthorised occupants to represent their case, (4) the Estate Officer must be satisfied that the public premises in question is unauthorisedly occupied; (5) the Estate Officer afterwards must make an order of eviction; (6) such an order of eviction must be suported by reason; (7) the order must direct the unauthorised occupier to vacate the premises on some date as may be specified in that order; and (8) the copy of the said order has to be affixed on the outer-door or in some other conspicuous part of the public premises in question. When all these requirements are satisfied it will be deemed that a proper order under section 5 of the Act has been passed. If such an order is passed, the affected party has an opportunity of filing an appeal to the Appellate Authority of the District in which the public premises is situated or such other judicial officer in that district of not less than such years' standing as may be prescribed and as the District Judge may designate in this behalf. It is seen that a substantial right is conferred upon the unauthorised occupant against whom orders of eviction are passed to prefer an appeal. Section 5 of the Act also casts duties upon the second respondent before invoking section 6 of the Act. It is not stated that before the impugned notice any order of eviction has been passed, and any proceedings taken for securing possession. When a substantial right has been given to a party by the provisions of an enactment, the authorities concerned cannot ignore the same and invoke the provision which arises only subsequent to the order of lawful eviction that has to be passed under section 5 of the Act. Even if there is a mistake in the rule by stating that Form 'C' is for section 5 (1) of the Act that will not absolve the authorities concerned from passing an order of eviction as contemplated under section 5 of the Act. The impugned notice is quashed.

N. V. Balasubramaniam, for Appellant.

V. T. Arasan, for Respondents Nos. 1 and 2.

S. Govind Swaminathan, for Respondent No. 3.

R.S. ——— *Writ appeal allowed.*

T. Sathiadev, J.

N. Sivasubramaniam *v.*
The Commissioner, H.R. & C.E., Madras

24th December, 1982.

W.P. No. 8966 of 1982.

Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959), *section* 45 *—Office of trustee and archaka vested in petitioner's family by succession from generation to generation—Order by Commissioner appointing Executive Officer — No valid reason given—Order set aside—Duty of Commissioner while passing such orders indicated.*

The petitioner was a trustee *cum* archaka of Sri Subramaniaswami Temple, Mudukulathur Taluk, Ramnad District ever since the death of his father. In earlier proceedings before the Hindu Religious and Charitable Endowments Board it had been held that the office of trusteeship and archakaship vested in the family of the petitioner by succession from generation to generation. The Commissioner of Hindu Religious and Charitable Endowments appointed another person as Executive Officer without notice and without disclosing the materials relied upon by him. Thereupon, a writ petition was filed challenging the order and the matter was remitted for fresh disposal after giving opportunity to the parties concerned. Thereafter, the impugned order containing again no valid reasons for appointing another person as Executive Officer was passed. Thereupon a writ petition was filed by the petitioner.

Held, the impugned order discloses that the first respondent, *i.e.,* the Commissioner was aware of the directions given by the Court in W.P. No. 1501 of 1981. Neither the petitioner nor the respondents 3 to 5 had been heard on a report which had been taken into account by the first respondent. Therefore, the first respondent has once again deprived the petitioner of a reasonable opportunity of putting forth his objections. The Commissioner cannot plead ignorance of his obligations to give reasons while passing an order under section 45 of the Tamil Nadu Act XXII of 1959 and more so when the matter has been remitted for considering the respective contentions made by the parties. In spite of being will aware that the satisfaction derived should be based on objective reasons, the impugned order having been passed another writ petition has been filed in this Court. The appellate authority cannot keep on driving some parties to the proceedings to Court and incur unnecessary and uncalled for expenditure. Once again the parties to the proceedings would be entitled to be heard and the report of the Assistant Commissioner, if any, relied upon should be made available to them. Hence the writ petition is allowed.

M. Subramania Rao and *T. L. Rammohan,* for Petitioner.

Government Pleader, for Respondent No. 1.

W. C. Thiruvengadam, for Respondents Nos. 2 to 5.

R.S. ——— *Petition allowed.*

S. Mohan, J.

George Varghese *v.*
The Food Corporation of India, represented by its Zonal Manager, Zonal Officer, Madras-6.

18th January, 1983.

W.P. No. 7108 of 1981.

Constitution of India (1950), *Article* 226*— Petitioner convicted by criminal Court—Dismissal from service—Conviction set aside by High Court—Petitioner restored to old position—Department initiating proceedings on the same charges—Liable to be quashed.*

The admitted facts of the case are that originally the writ petitioner was convicted for certain offences in the criminal Court. Based on that conviction, he was called upon to show cause why he should not be dismissed from service. After receiving the reply from him the Food Corporation of India dismissed him from service. Ultimately the conviction order was set aside. As a result, he was restored to his old position with all back wages. Thereafter the present memorandum of charges was issued on 9th April, 1981, which is sought to quashed in this writ petition.

Held, since the charges in the criminal Court and the memorandum of charges, now served on the petitioner are identical there is absolutely no jurisdiction on the part of the defendant to proceed against the petitioner.

K. Doraiswami, P. Sathasivan and *T. Ganesan,* for Petitioner.

S. Rajaram, for Respondent.

R.S. ——— *Petition allowed.*

V. Ramaswami and
T. N. Singaravelu, JJ.

Christian Medical College etc., by its Secretary *v.*

Government of India, represented by the Secretary, Ministry of Law, Delhi.

23rd December, 1982.

W.P. Nos. 220, 221 and 222 of 1980.

Industrial Disputes Act (XIV of 1947), *section* 2 (k)—*Industrial dispute — Christian Medical College Hospital as an attached teaching institution, whether an educational institution—Applicability of the Act to educational institutions.*

The definition of 'Industrial Dispute' under section 2 (*k*) of the Industrial Disputes Act is very widely worded and it could cover within its ambit every difference or dispute connected with the conditions of service of a member of the staff of an educational institution however trivial or insignificant it may be, which may arise between the management and a member of the staff. Therefore any order of whatsoever kind passed by the management in respect of a member of the staff can be taken up for conciliation before the Conciliation Officer at the instance of the staff. Conciliation may be even against orders of the management which merely administer a warning or a censure or impose some other punishment or transfer constituting purely management functions. Under section 12 (4), the Conciliation Officer is required to submit a full report to the Government on the facts and circumstances of the case, his efforts to bring about a settlement and the reasons for the failure of his efforts, and on consideration of the report, the Government is given an absolute discretion to refer the matter to the Labour Court for adjudication. The Labour Court, on such reference, is given wide powers including the power to differ both on the finding of misconduct arrived at by the management as well as the punishment imposed by the management. It is not restricted to scrutinising whether the disciplinary proceeding has been conducted in conformity with the procedure laid down, as well as with the principles of natural justice, or whether it is an action *mala fide* or vindictive as a measure of victimisation. The Labour Court or Tribunal is vested with power to reopen the findings entered by the authority even after observing the principles of natural justice and determine for itself even pure questions of fact as to the guilt or otherwise of the employee. It can modify, vary, set aside an order of discharge or dismissal, and direct reinstatement of the employee on such terms and conditions as it thinks fit and give such other relief to the employee including the award of any lesser punishment in lieu of discharge or dismissal even in cases where the misconduct has been duly established at the domestic enquiry. This power will hamper the effective exercise by the management of disciplinary control of the staff and in effect completely displaces the disciplinary authority of the management over the staff and vests it in an outside authority. Section 33 requiring permission of approval of the Conciliation Officer, Labour Court or Tribunal as the case may be for altering the conditions of service or taking disciplinary action against a member of the staff during the pendency of the proceedings and section 9-A imposing restrictions on the freedom of action in making changes in the hours of work, rest, intervals, leave, introduction of new rules of discipline, improvements of plant or technique etc., would really affect the right of the petitioner in its day to day administration of its educational institution. The provisions of sections 9-A, 10, 11 and 12 would not be applicable to the petitioner.

V. K. Thiruvenkatachari, for *King* and *Patridge,* for Petitioner.

Row and *Reddy,* for Respondents.

R.S. ——— *Petition allowed.*

[End of Volume (1983) 1 M.L.J. (N.R.C.)]