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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: December 10, 2014

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W.P.(C) 2669/2011

THE COOPERATIVE STORE LIMITED

..... Petitioner

Represented by: Ms.Perna Mehta, Adv.

Versus

RAMESH CHANDER

..... Respondent

Represented by: Mr.Rajiv Aggarwal and
Mr.Sachin Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner/Management seeks quashing of the impugned award dated 08.12.2010 passed by learned Tribunal in I.D. No. 127-10/95, whereby directed the petitioner/Management to pay lump sum compensation for an amount of Rs.2,00,000/- (Rs. Two Lac) in favour of respondent No. 1 in lieu of reinstatement and back wages.

2. The case of the respondent/workman before the labour Court was that he joined as Junior Supervisor on 12.07.1966. He had unblemished service record. He was given a charge-sheet on 04.07.1988. He replied the charge-sheet. However, an inquiry was held. A show-cause notice was issued thereafter. He was removed from service.

3. Being aggrieved, respondent/workman filed an appeal on 15.09.1990, same was dismissed.
4. Being aggrieved, he challenged the dismissal order on the ground that he had not committed any misconduct of intentional absence from service since his old age mother was suffering and he sent leave applications. The inquiry was challenged on the ground that the findings were perverse and based on suspicion. Further challenged the removal order on the ground that it was too harsh, thus, he prayed for reinstatement with back wages.
5. Ms.Perna Mehta, learned counsel appearing on behalf of the petitioner/Management submitted that the allegations against the respondent/workman were that he was unauthorizedly absent from duty since 28.04.1988, he had moved several leave applications which were sanctioned for 33 days prior to 28.04.1988. The leave application filed thereafter was rejected in the interest of organisation, accordingly, the respondent/workman was directed to join duty by 05.05.1988, however, he did not join the duties. Thereafter a departmental inquiry was conducted. She submitted that learned Tribunal opined that the inquiry does not suffer from any violation of principle of natural justice and that the findings are not perverse.
6. Learned counsel further submitted that vide order dated 21.05.1990 the General Manager of the petitioner/Management observed in its order as under:

“I have carefully analysed the report of the Inquiry Officer, material available on record as well as the evidence adduced on behalf of both the sides during the course of inquiry proceedings. I find that Inquiry Officer has correctly come to the conclusion of Management of guilt against Shri Ramesh Chander and I accept the findings of the Inquiry Officer in its entirety and hold the charges as fully established.

The gravity of the misconduct of un-authorised absence for such a long period by Shri Ramesh Chander, is to be viewed in the background that Super Bazar, being a consumer Cooperative Store, is functioning in the public interest and action as an important mechanism for the Ministry of Food & Civil Supplies to control the price line in the interest of the general consumers and to provide efficient services to the weaker sections of the society. It is imperative that in an endeavour to achieve these objects, the margins and overheads of the organisation have to be kept at the very minimum. It is necessary for such an organization to have dedicated staff members with proper and positive attitude to serve the general consumer. If a Jr. Supervisor remains unauthorisedly absent from duty for sufficient long periods without any valid reasons, there is no way in which an organisation can function efficiently in the interest of the general consumers. I find from the inquiry proceedings that Sh.Ramesh Chander, has displayed gross callousness towards his job and had remained extremely indifferent to his duties. In these circumstances, I do not consider him suitable person to continue in service of such an organisation which has to serve in larger public interest and I, therefore, impose the major penalty of removal from service. It is also further ordered that Sh. Ramesh Chander will not be entitled to any further pay and allowance for the period of his suspension over and above the subsistence allowance. ”

7. Moreover, learned Tribunal in the impugned order recorded that the respondent/workman had availed leave of 92 days from 27.01.1988 to 27.04.1988. He had applied leave upto 28.05.1988 which were not sanctioned. He remained absent till the date of suspension i.e. 08.09.1988. The learned Tribunal in its impugned award has recorded the observations of General Manager of the petitioner/Management and the conduct of the respondent/workman. Despite, holding that the inquiry was not vitiated; the learned Tribunal has directed the petitioner/Management to pay compensation for a sum of Rs. 2 lac.

8. Learned counsel for the petitioner/Management submitted that when the Tribunal came to the conclusion, the inquiry was proper or justifiable, in that eventuality under Section 11-A of the Industrial Disputes Act, the learned Tribunal has no power to substitute the punishment awarded by the disciplinary authority and by the Appellate Authority. In the present case, despite recording of misconduct of unauthorised absence, the learned Tribunal has taken a lenient view and awarded an amount of Rs. 2 Lac in favour of the respondent/workman. In such a situation, the learned Tribunal ought to have dismissed the claim petition filed by the petitioner. The learned Tribunal has limited scope to modify the punishment awarded by the disciplinary authority and especially in the event that the inquiry has been held legal and proper.

9. To strengthen her arguments, learned counsel for the petitioner/Management has relied upon the case of ***The Workmen of M/s Firestone Tyre and Rubber Co. Of India Pvt. Ltd. vs. The Management and Ors.***1973 (1) SCC 813. Para 3 of the same reads as under:

“3. Regarding Section 11A, in the Statement of objects and reasons it is stated as follows :-

In Indian Iron and Steel Company Limited and another v. their workmen (AIR 1958 SC 130 at 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management.

The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer, adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or

dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11A is proposed to be inserted in the Industrial Disputes Act, 1947....

10. If there has been any violation of the rights of the respondent/workman and unfair labour practice or the violation of principle of natural justice, only in that situation, the learned Tribunal has power under Section 11-A to modify the punishment awarded by the petitioner/Management. To strengthen her arguments she relied upon Para 32 of ***Firestone (Supra)*** which is reproduced as under:

“32.From those decisions, the following principles broadly emerge :-

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible

conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.”

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(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.”

11. Learned counsel also relied upon the case of ***U.P. State Road Transport Corpn. Vs. Subhash Chander Sharma and Ors. (2000) 3 SCC 324***. Relevant paras of the same read as under:

“5. Learned Counsel appearing for the appellant has contended that once it was found by the Labour Court that the departmental enquiry conducted against the respondent was proper and it did not suffer from any infirmity, it was not open to it to interfere with the quantum of punishment. It is contended that the High Court should have, on that ground, set aside the award and maintained the order of removal passed against the respondent.

8. This section, as interpreted by this Court, no doubt, vests the Labour Court with discretion to substitute the order of discharge or dismissal of a workman into

an order of reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. In the present case, the following industrial dispute was referred to the Labour Court for adjudication:

Whether the termination of the service of their workman Sh. Subhash Chandra Sharma S/o Shri Nathimal, driver by the employer by order dt. 31-8-1991 is proper and legal? If not, what is the relief (with details) to which the workman is entitled to?

9. The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent, from the service. The charge against the respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if

allowed to stand, would certainly result in miscarriage of justice.”

12. Learned counsel further submitted that the unauthorised absence comes under the misconduct and it has been proved in the inquiry proceedings. Moreover, the same has been accepted by the learned Tribunal. In case of misconduct the dismissal is the proper punishment and in that eventuality the learned Tribunal has no power except the criteria mentioned in Para 32 of the case of ***Fire Stone Tyre (supra)***.

13. Learned counsel submitted that misconduct has been explained in case of ***L&T Komatsu Ltd. vs. N. Udaya Kumar (2008) 1 SCC 224***. Relevant Paras of the same read as under:

“8. So far as the question whether habitual absents means the gross violation of discipline, it is relevant to take note of what was stated by this Court in Burn & Co. Ltd. v. Workmen (AIR p.530, para 5)

“5.....There should have been an application for leave but Roy thought that he could claim as a matter of right leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if the company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with the services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension.”

9. *In Life Insurance Corporation of India v. R. Dhandapani* : it was held as follows:

“It is not necessary to go into in detail regarding the power exercisable under Section 11A of the Act. The power under said Section 11A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan].

Though under Section 11A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

The High Court found that the Industrial Tribunal had not indicated any reason to justify variations of the penalty imposed. Though learned Counsel for the respondent tried to justify the Award of the Tribunal and submitted that the Tribunal and the learned Single Judge have considered the case in its proper perspective, we do not find any substance in the plea. Industrial Tribunals and Labour Courts are not forums whose task is to dole out private benevolence to workmen found by Labour Court/Tribunal to be guilty of misconduct. The Tribunal and the High Court, in this case, have found a pattern of defiance and proved misconduct on not one but on several occasions. The compassion which was shown by the Tribunal and unfortunately endorsed by learned single Judge was fully misplaced.

10. In Mahindra and Mahindra Ltd. v. N.B. Narawade, it was noted as follows: (SCC p. 141, para 20)

“20....It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11A is available only on the existence of certain factors like punishment being

disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. and New Shorrock Mills this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove."

14. Learned counsel submitted that in view of the settled law the impugned award is liable to be set aside.

15. On the other hand, Mr.Rajiv Aggarwal, learned counsel for the respondent/workman submitted that Section 11-A of the I.D. Act, gives power to the Tribunal to modify the punishment which is reproduced as under:

"Section 11A.Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen-Where an industrial dispute relating to the discharge of dismissal of a workman has been

referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court Tribunal or National Tribunal, as the case may be, shall rely on the materials on record and shall not take any fresh evidence in relation to the matter.”

16. He submitted that if the Tribunal was satisfied that the order of discharge or dismissal was not justified, the learned Tribunal has power to set aside the order of dismissal and discharge and direct the reinstatement of respondent/workman of substance and, with condition, if any, which is needed. The Tribunal may give such other relief to the respondent/workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

17. Mr. Aggarwal, submitted that respondent/workman joined service with the petitioner/Management on 12.07.1966. The charges against the respondent No.1 that he remained unauthorizedly absent from duty since 28.04.1988. The petitioner/Management has admitted that the respondent/workman made an application on 21.01.1988 for grant of leave between 27.01.1988 till 25.03.1988, he again applied for extension of

another 33 days on 26.03.1988, which was granted. The respondent/workman had sought leave of 92 days from 27.01.1988 to 27.04.1988. He applied leave upto 28.05.1988 which was not sanctioned, which according to the Management was the clear lack of interest in the execution of work of the Management.

18. Learned counsel submitted that respondent / workman's mother was unwell and made applications for leave, and, therefore, he was not unauthorizedly absent. However, the petitioner/Management did not sanction the leave, however, that does not come under the purview of the misconduct. The respondent/workman had served for almost 22 years and dismissal of a person from service is equivalent to death penalty granted in a criminal case. He was removed on 21.05.1990 more than two decades have been passed, the learned Tribunal had taken all these facts into consideration and thus not directed the respondent/workman to be reinstated in service, however, directed the petitioner/Management to grant compensation of Rs.2 lac only in lieu of reinstatement and back wages which is justifiable and not contrary to the settled law.

19. To strengthen his arguments learned counsel has relied upon the case of ***Raghubir Singh v. General Manager, Haryana Roadways 2014 (10) SCALE 135***. Relevant paras of the same read as under:

“33. The question is whether Section 11A has made any changes in the legal position mentioned above and if so, to what extent? The Statement of objects and reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what the Legislature

wanted to achieve. At the time of introducing Section 11A in the Act, the legislature must have been aware of the several principles laid down in the various decisions of this Court referred to above. The object is stated to be that the, Tribunal should have power in cases, where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment. The Statement of objects and reasons has specifically referred to the limitation on the powers of an Industrial Tribunal, as laid, down by this Court in *Indian Iron and Steel Co. Ltd. v. Their Workmen* : AIR 1958 SC 130 at P.138.

34. This will be a convenient stage to consider the contents of Section 11A. To invoke Section 11A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the, order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the work-man including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence.

Thus, we believe that the Labour Court and the High Court have failed in not adjudicating the dispute on merits and also in not discharging their statutory duty in exercise of their power vested Under Section 11A of the Act and therefore, the impugned judgment, order and award are contrary to the provisions of the Act and law laid down by this Court in the above case.

34. Further, the object of insertion of Section 11A of the Act is traceable to the International Labour Organisation resolution as it is stated in the case of **Workmen of Messrs Firestone Tyre & Rubber** case (*supra*) that:

3. The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled, to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case, and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11A is

proposed to be inserted in the Industrial Disputes Act, 1947....

Therefore, we are of the firm view that the Labour Court and the High Court have failed to adjudicate the dispute referred to it on the merits. This has lead to gross miscarriage of justice and therefore, we have to exercise our jurisdiction Under Article 136 of the Constitution of India and interfere with the impugned judgment, order and award of the High Court and the Labour Court to do justice to the workman who has been relentlessly litigating for his legitimate rights.

35. Having regard to the facts and circumstances of this case, we are of the view that it is important to discuss the Rule of the 'Doctrine of Proportionality' in ensuring preservation of the rights of the workman. The principle of 'Doctrine of Proportionality' is a well recognised one to ensure that the action of the employer against employees/workmen does not impinge their fundamental and statutory rights. The above said important doctrine has to be followed by the employer/employers at the time of taking disciplinary action against their employees/workmen to satisfy the principles of natural justice and safeguard the rights of employees/workmen.

36. The above said "Doctrine of Proportionality" should be applied to the fact situation as we are of the firm view that the order of termination, even if we accept the same is justified, it is disproportionate to the gravity of misconduct."

20. Also relied upon Para 6 of the ***Municipal Corporation of Delhi vs. Asha Ram, 117 (2005) DLT 63*** which reads as under:

“6. The position of law in respect of interference by Writ Court under Article 226 of the Constitution is well settled in view of the following:-

(a) The Supreme Court in para 5 in Sadhu Ram v. Delhi Transport Corporation, AIR 1984 SC 1967 observed :

" nor we think that it was right for the High Court to interfere with the Award of the Labour Court under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set-aside the the judgment of the High Court and restore the Award of the Presiding Officer."

(b) The Supreme Court in Harbans Lal v. Jag Mohan, : AIR1986SC302 :

" The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal of subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power."

(c) The Supreme Court in Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors. : (1989)ILLJ223SC observed :

".....The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by the Government to the Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the Awards made by the Industrial Tribunal instead of picking holes here and there in the Awards on rival points and ultimately frustrating the entire adjudication process before the Tribunals by striking down the Awards in hyper technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the Award fruitless on an untenable basis....."

21. I have heard the learned counsel for the parties. The issue in the instant petition to be considered by this Court is that whether the Tribunal has power under Section 11A of the Industrial Disputes Act to alter the punishment awarded in fair and legal proceedings by the employer.

22. In case of ***Fire Stone Tyre*** (*supra*), the Hon'ble Supreme Court has held that the Tribunal's power to interfere with the Management's decision to dismiss/discharge or terminate the services of workman vests only when there is want of good faith, victimisation, unfair labour practice etc. on the part of the Management. The International Labour Organisation, in its recommendation (119) observed that unless reinstatement is granted it should be with adequate compensation or afforded relief to discharge or dismissal of a workman should not be

limited. The Tribunal should have the power in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the respondent/workman on such terms and conditions including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. For this purpose, a new Section 11A has been inserted in the Industrial Disputes Act, 1947.

23. Admittedly, the respondent/workman made an application on 21.01.1988 for grant of leave between 27.01.1988 till 25.03.1988. Again he applied for extension of leave of another 33 days on 26.03.1988 which was granted by the petitioner/Management. Thus, the respondent/workman had sought leave of 92 days from 27.01.1988 to 27.04.1988, in nutshell; he applied leave up to 25.05.1988 which was not sanctioned on the presumption that the workman was showing disinterest in the execution of work of the Management.

24. Fact remains that the respondent/workman applied for leave as his mother was unwell and accordingly the petitioner/Management sanctioned some of the leaves and denied the rest, thus it cannot be established that the respondent/workman was unauthorizedly absent for whole period. However, since the petitioner/Management did not sanction all the leaves sought by the respondent/workman and considered the same as misconduct by the respondent/workman as he was unauthorizedly absent, thus was removed from service. The respondent/workman joined services with the petitioner/Management on 12.07.1966 and thereafter removed from service on 21.05.1990. More than two decades he had been in service even then leave of respondent/workman were not sanctioned by

the petitioner/ Management. The learned Tribunal considered all the facts noted above and accordingly directed the petitioner/Management to pay compensation of Rs.2 lac in favour of the respondent/workman.

25. Moreover, under Article 226 of the Constitution, the order passed by the Tribunal is to be interfered with if suffer from an error of jurisdiction or from a breach of principle of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling to this Court to reappraise the evidence unless sufficient reason in law and findings of facts contrary to those rendered by an inferior Court or Subordinate Court are available.

26. In view of the facts recorded above and the law discussed, this Court is not inclined to interfere with the award dated 08.12.2010 passed by the learned Tribunal.

27. Accordingly, the instant petition is dismissed with no order as to costs.

28. Pursuant to order dated 27.04.2011, the petitioner/Management has deposited an amount of Rs.2 lac with Registrar General of this Court. Since, the present petition has been dismissed, the Registrar General is directed to release the said amount in favour of the respondent/workman with interest accrued thereon.

SURESH KAIT
(JUDGE)

DECEMBER 10, 2014
mr/jg