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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 06th August, 2026***# **CNR No. DLHC011210822013**+ **W.P.(C) 5276/2013****DELHI TRANSPORT CORPORATION** PetitionerThrough: Mr. Akshat Tiwari & Mr. Uday
N. Tiwary, Adv. through V.C.

versus

MS. SAHAB KAUR & ANR. RespondentsThrough: Mr. Yudhvir Dalal, Ms.
Sunaina, Mr. Sahil Kumar &
Mr. Anshul, Advs.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T (ORAL)****AMIT MAHAJAN, J.**

1. By the present petition, the petitioner challenges the award dated 10.05.2013 (hereafter '**impugned award**') passed by the learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi in ID No. 75/2011 to the limited extent that the learned Labour Court while exercising power under Section 11A of the Industrial Disputes Act, 1947 ('**ID Act**') ought not to have reduced the punishment of the deceased workman from termination to compulsory retirement.

2. Briefly stated, the deceased workman, who is represented before this Court by his wife and son, was employed as a conductor

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with the petitioner corporation in the year 1983. It is the case against the deceased workman that he remained absent from work without permission for a period of approximately 207 days in the period between June 1991 - December 1991.

3. Chargesheet is stated to have been issued to the deceased workman on 19.09.1991 for remaining absent from duty without prior intimation from 08.06.1991.

4. Pursuant to the domestic enquiry, the deceased workman was issued a termination letter on 20.02.1992.

5. Thereafter, in the industrial dispute raised by the workman, the learned Labour Court found that since the workman remained absent for 207 days without sanction of leave, the termination of the workman on this count was justified. The learned Labour Court, however, considering the mitigating circumstances, modified the punishment awarded to the deceased workman from termination to compulsory retirement.

6. Aggrieved by that limited aspect, the petitioner corporation has filed the present petition.

7. The learned counsel for the petitioner submits that the learned Labour Court, erred in modifying the punishment awarded to the workman from termination to compulsory retirement in exercise of power under Section 11A of the ID Act.

8. He submits that the misconduct had been duly proved and absents from duty unauthorizedly by no stretch of imagination can be held to be a minor misconduct. He relies upon the judgment passed by the Hon'ble Apex Court in the case of ***DTC v. Sardar Singh*** :



(2004) 7 SCC 574 to contend that remaining unauthorizedly absent from duty is a serious misconduct for which the punishment of termination is not unjustified. He submits that since the punishment was proportionate to the misconduct, the punishment ought not to have been modified.

9. He further relied upon the case *Mahindra and Mahindra Ltd. v. N.B. Narawade* : (2005) 3 SCC 134 to argue that the Labour Court cannot by way of sympathy alone exercise power under Section 11A of the ID Act to reduce the punishment.

10. *Per contra*, the learned counsel for the respondents submits that the deceased workman worked with the petitioner corporation for a period of almost 8 years and his past record is unblemished. He submits that even though the petitioner has alleged that in the past also the deceased workman had remained unauthorizedly absent, no action had been taken by the petitioner corporation on those occasions.

11. I have heard learned counsel for the parties.

12. At the outset, it is relevant to note that the jurisdiction of the High Court to issue a writ or direction in exercise of power under Article 226 of the Constitution of India is supervisory in nature and the Court ought not act as an appellate Court. This Court therefore cannot substitute its own view for the view taken by the Labour Court unless the same is shown to be arbitrary or perverse.

13. As noted above, the short question presented before this Court for adjudication is thus whether the learned Labour Court while upholding the misconduct was justified in modifying the punishment from dismissal to compulsory retirement.



14. Before this Court adverts to delve into the factual matrix of the present case, it is apposite to take note of Section 11A of the I.D. Act which reads as under:

“[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 or 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 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:

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

15. From a reading of Section 11A of the ID Act, it is clear that the learned Labour Court is vested with a discretion to modify the punishment if the Labour Court is satisfied that the order of discharge or dismissal was not justified. The same, though not an unbridled power, authorises the Labour Court to modify the punishment when the same is disproportionate to the gravity of the misconduct, or there exists certain mitigating circumstances which persuades the Labour Court to reduce the punishment.

16. Adverting now to the facts of the present case, it remains undisputed that the deceased workman worked with the petitioner department for more than 08 years before finally being chargesheeted for remaining unauthorisedly absent. Nothing has come on record to show that earlier, during the course of the employment, the deceased



workman was charge sheeted for any other misconduct.

17. It is the case of the deceased workman that he remained absent because he was medically unfit. It is also the case of the workman that subsequently, he reported to work on 21.02.1992 with medical fitness certificate but the management refused to take him back.

18. The learned Labour Court however did not agree with the defence of the deceased workman and noted that the workman had failed to show that he remained absent for valid reasons. It was further noted that remaining absent for 207 days without sanction warranted punishment. The deceased workman has not challenged the impugned award.

19. At the same time, in the opinion of this Court, the learned Labour Court has not exceeded its jurisdiction in modifying the order of dismissal to that of compulsory retirement in the facts of the present case.

20. The learned counsel for the petitioner corporation has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***DTC v. Sardar Singh*** (*supra*) to contend that remaining unauthorizedly absent from duty is a serious misconduct for which the punishment of termination is not unjustified. Reliance has also been placed on the case of ***Mahindra and Mahindra Ltd. v. N.B. Narawade*** (*supra*) to contend that the Labour Court cannot be swayed by sympathetic considerations while modifying the punishment especially when misconduct is proved.

21. Insofar as reliance on the case of ***DTC v. Sardar Singh*** (*supra*) is concerned, there can be no quarrel with the proposition that habitual



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and prolonged unauthorised absence from work amounts to misconduct. The said case however does not delve into the aspect of proportionality of punishment and also does not lay down a generalized form of punishment for unauthorised leave for prolonged periods and is consequently not applicable to the facts of the present case. In the said case, the workers had unauthorisedly absented themselves from work and the Labour Court had found that availing leave without pay did not amount to misconduct. The Labour Court further noted since the employer had treated absence from duty as leave without pay, the same amounted to sanction of leave and there was no misconduct. The Labour Court also refused the approval sought in terms of Section 33(2)(b) of the ID Act. The employer had thereafter approached a Coordinate Bench of this Court which found that the disapproval by the Labour Court was not in order. Subsequently, a Division Bench of this Court restored the findings of the Labour Court. On that limited question on misconduct, the Hon'ble Apex Court found that treating leave without pay did not amount to sanctioned or approved leave and prolonged absence without sanctioned leave amounted to misconduct. The Court however did not go into the question of proportionality of punishment and only upheld termination as *a form* of punishment in the facts of that case.

22. As noted above, the charge of misconduct was found to be proved against the deceased workman on preponderance of probability and the said finding has not been challenged by the deceased workman.

23. The only question before this Court is whether the learned



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Tribunal rightly exercised its jurisdiction in modifying the punishment in the present case.

24. Much emphasis has been laid by the learned counsel for the petitioner corporation on the case of ***Mahindra and Mahindra Ltd. v. N.B. Narawade*** (*supra*) to argue that in a similar fashion where misconduct was proved, the modification in punishment on sympathetic grounds was found to be incorrect. It has consequently been urged that the impugned award is liable to be set aside as the modification in punishment was based on sympathetic grounds and is disproportionate to the gravity of the misconduct. The ratio in the said case, in the opinion of this Court, is however not applicable to the facts of the present case.

25. Undoubtedly, Labour Courts should refrain from interfering with the punishments on the basis of bald compassionate considerations, however, the same does not preclude interference if the punishment is found to be disproportionate or there exists certain mitigating circumstances including the past conduct of workman that persuades the Court to reduce the punishment. In the case of ***Mahindra and Mahindra Ltd. v. N.B. Narawade*** (*supra*), the allegation against the workman was that he used abusive language against a superior officer. The learned Labour Court in that case however reduced the punishment from termination to reinstatement with continuity of service with 2/3rd back wages solely for compassionate reasons without taking into account the gravity of the misconduct. The same was upheld by the Single and Division Bench of Bombay High Court noting that the said punishment was



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reformatory and would act as a deterrent and that dismissal would be too harsh considering the length of service put by the employee. While setting aside the same, the Hon'ble Apex Court noted that the Labour Court ought not be swayed by compassionate grounds and that Labour Court did not take into account the fact that the workman therein had been chargesheeted on previous occasions as well for similar conduct.

26. In the present case however, as is apparent from a reading of the impugned award, the learned Tribunal did not modify the punishment on compassionate grounds and found the punishment to be disproportionate to the gravity of the misconduct. It was noted that while the misconduct was proved, during the course of the proceedings before the learned Labour Court, the workman had produced a medical certificate to justify his absence. As appreciated by the learned Labour Court, the said certificate was not contested by the management to be fake. Holistically, the learned Labour Court also considered ancillary factors like the deceased workman had worked with the corporation for past 8 years before finally being chargesheeted for remaining unauthorisedly absent and had also expired during the course of the proceedings on account of illness. The learned Labour Court also noted that the corporation had failed to produce the attendance record of the deceased workman.

27. In the present case, though the allegations ought not to be undermined, this Court finds that the same are not of such nature and severity which would justify direct termination of services. The learned Labour Court can thus not be faulted for modifying the punishment as the same appears to be *ex facie* harsh.



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28. It cannot also be ignored that more than a decade has passed since the passing of the impugned award. A reasonable and plausible view which has been taken by the learned Labour Court, as in the present case, ought not to be interfered with while exercising jurisdiction under Article 226 of the Constitution of India.

29. The present writ petition thus, being devoid of merit, is accordingly dismissed.

AMIT MAHAJAN, J

AUGUST 6, 2026
“SK”