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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2140 OF 1997

Maharashtra State Road Transport Corporation.
Through it's Divisional Controller,
Jalgaon.

..PETITIONER

-VERSUS-

Pandit Manga Girase,
Age : Major, Occ : Ex- Conductor,
R/o Virvade, Tq.Chopda, Dist.Jalgaon.

..RESPONDENTS

.....

Mr.M.K.Goyanka, Advocate for the Petitioner.
Mr.Vijay Y. Patil, Advocate for the Respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd July, 2015

Oral Judgment:

1 The Petitioner has challenged the judgment delivered by the Labour Court dated 07.07.1993 in Complaint (ULP) No.80/1991 and the order dated 28.06.1996 passed by the Industrial Court in Revision (ULP) No.335/1993.

2 By an ad-interim order dated 26.06.1997, this Court has stayed the payment of back-wages. By the order dated 11.09.1997, the stay to the payment of back-wages was continued and the petition was

admitted.

3 I have heard Shri Goyanka, learned Advocate for the
Petitioner and Shri Patil, learned Advocate for the Respondent extensively.

4 The controversy relates to the legality and validity of the
order of dismissal dated 30.06.1988. Admittedly, the Respondent has been
dismissed from service for absenteeism of 20 days. Prior to his dismissal,
there are instances of punishments for unauthorized absenteeism on the
part of the Respondent. Orders of dismissal were issued twice prior to this
dismissal at issue, for similar misconducts committed by the Respondent
in the past.

5 The enquiry conducted by the Petitioner was set aside by Part-
I order dated 30.09.1992 by which the Labour Court concluded that the
findings of the Enquiry Officer are perverse. By the judgment dated
07.07.1993 the Labour Court partly allowed the complaint and granted
reinstatement in service with continuity and 70% back-wages from the
date of dismissal 30.06.1988 till his reinstatement considering the
punishment to be disproportionate.

6 Revision (ULP) No.335/1993 was filed by the Petitioner before the Industrial Court on 03.09.1993. By the order dated 28.06.1996, the Industrial Court after hearing the Petitioner and the Respondent passed the following order:-

“Heard both parties. It is submitted by both parties that Rev.applicant has implemented the order of the lower court without any reservation. In view of this submission the Revn. has become infructuous. Hence order. Revn. is rejected.”

7 Being aggrieved by the said order dated 28.06.1996 the Petitioner filed this petition on 06.03.1997. The grievance of the Petitioner is that the revision petition could not have been disposed of as infructuous merely because the Petitioner reinstated the Respondent in deference to the order of the Labour Court dated 07.07.1993. It is, however, not in dispute that the Respondent worked till attaining the age of superannuation and has finally retired in 2002. His gratuity is still unpaid.

8 It is apparent that the Industrial Court has held that the revision petition has become infructuous. This order was passed 19 years ago. The Respondent is said to be above 70 years of age today. If the judgment of the Labour Court dated 07.07.1993 is to be scrutinized under Section 44 of the MRTU & PULP Act, 1971, Revision (ULP) No.335/1993 will have to be restored and remitted back to the Industrial Court at

Jalgaon (earlier Nashik). Thirteen years have lapsed pursuant to the retirement of the Respondent. I would find it fruitless to remit the revision to the Industrial Court and direct the parties to prosecute the said revision petition filed by the Petitioner, after 13 years of retirement.

9 I have considered the judgment of the Labour Court. Though the Respondent had admitted that he had remained unauthorizedly absent for 20 days and had tried to explain his absence as being the cause of an accident, it cannot be ignored that he was dismissed on two occasions earlier on charges of absenteeism and was, thereafter, reinstated in employment. The second Appellate Authority while rejecting the Second Appeal of the Respondent had observed that despite two earlier dismissals, he has not improved his conduct and he continues to remain absent. Despite this fact, the Labour Court held that disproportionate punishment was awarded to the Respondent and therefore, directed his reinstatement with continuity and 70% back-wages.

10 It is trite law that the quantum of punishment need not be interfered with when it appears to be disproportionate. It should appear to be shockingly disproportionate to the gravity and seriousness of the misconduct.

11 The scope of interference of the courts has been considered in 1947 in the *Associated Provincial Picture Houses Ltd. v/s Wednesbury Corporation* reported in **(1947) 2 ALL ER 680 : (1948) 1 KB 223**. The said judgment delivered by a Three Judges Bench (Lord Greene, M.R., Somervell, L.J., and Singleton, J.) lays down the scope of interference of the courts and the conditions to be satisfied for causing judicial review. It would be apposite to reproduce three paragraphs from the said judgment which read as under:-

“The contention of the authority, in my opinion, is based on a misconception of the effect of the Act in granting this discretionary power to local authorities. The courts must always remember, first, that the Act deals, not with a judicial act, but with an executive act; secondly, that the conditions which, under the exercise of that executive act, may be imposed are in terms put within the discretion of the local authority without limitation; and thirdly, that the statute provides no appeal from the decision of the local authority. What, then, is the power of the courts ? The courts can only interfere with an act of an executive authority if it be shown that the authority have contravened the law. It is for those who assert that the local authority have contravened the law to establish that proposition. On the face of it, a condition of this kind is perfectly lawful. It is not to be assumed prima facie that responsible bodies like local authorities will exceed their powers, and the court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for the local authority. It is only concerned with seeing whether or not the proposition made good. When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged

in the courts in a very limited class of case. It must always be remembered that the court is not a court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law.

What, then, are those principles ? They are perfectly well understood. The exercise of such of a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty-those, of course, stand by themselves-unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word "unreasonable." It is true the discretion must be exercised reasonably. What does that mean ? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey

those rules, he may truly be said, and often is said, to be acting “unreasonably.” Similarly, you may have something so absurd that no sensible person could even dream that it lay within the powers of the authority. WARRINGTON, L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head.

In the present case, it is said by counsel for the plaintiffs that the authority acted unreasonably in imposing this condition. In the first place, it appears to me clear that the matter dealt with by this condition was one which a reasonable authority would be justified in considering when it was making up its mind what conditions should be attached to the grant of its permission. Nobody, at this time of day, can say that the well-being and the physical and moral health of children are not matters which a local authority, in exercising its power, can properly have in mind when those questions are germane to what it has to consider. Counsel for the plaintiffs did not suggest that the authority were directing their minds to a purely extraneous and irrelevant matter, but he based his argument on the word “unreasonable,” which he treated as an independent ground for attacking the decision of the authority. Once, however, it is conceded, as it must be conceded, that the subject-matter of this condition was one which it was competent for the authority to consider, there, in my opinion, is an end of the case, because, once that is granted, counsel must go so far as to say that the decision of the authority is wrong because it is unreasonable, and then he is really saying that the ultimate arbiter of what is and is not reasonable is the court and not the local authority. It is just there, it seems to me, that the whole argument entirely breaks down. It is perfectly clear that the local authority are entrusted by Parliament with the

decision on a matter in which the knowledge and experience of the authority can best be trusted to be of value. The subject-matter with which the condition deals is one relevant for its consideration. It has considered it and come to a decision on it. Theoretically it is true to say and in practice it may operate in some cases that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is right, but that would require overwhelming proof, can in this case the facts do not come anywhere near such a thing. Counsel in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense, not that it is what the court considers unreasonable, but that it is what the court considers is a decision that no reasonable body could have come to, which is a different thing altogether. The court may very well have different views from those of a local authority on matter of high public policy of this kind. Some courts might think that no children ought to be admitted on Sundays at all, some courts might think the reverse. All over the country, I have no doubt, on a thing of that sort honest and sincere people hold different views. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority who are put in that position and, provided they act, as they have acted here, within the four corners of their jurisdiction, the court, in my opinion, cannot interfere.”

12 In a somewhat similar situation, the Honourable Supreme Court in the case of *Om Kumar v/s Union of India*, reported in **(2001) 2 SCC 386**, has held in paragraphs 27, 28, 37, 38, 39, 67, 69 and 71 as

under:-

- “27. The principle originated in Prussia in the nineteenth Century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court had applied the principle of 'proportionality' to legislative action since 1950, as stated in detail below.
28. By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve'. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality.”
- “37. The development of the principle of 'strict Scrutiny' or 'proportionality' in Administrative Law in England is, however, recent. Administrative action was traditionally being tested on Wednesbury grounds. But in the last few years, administrative action affecting the freedom of expression or liberty has been declared invalid in several cases applying the principle of 'strict scrutiny'. In the case of these freedoms, Wednesbury principles are no longer applied. The Courts in England could not expressly apply proportionality in the absence of the Convention but

tried to safeguard the rights zealously by treating the said rights as basic to the Common Law and the Courts then applied the strict scrutiny test. In the *Spycatcher Case Attorney General v. Guardian Newspapers Ltd.*, (No.2) (1990) 1 AC 109 (at pp. 283-284), Lord Goff stated that there was no inconsistency between the Convention and the Common Law. In *Derbyshire Country Council v. Times Newspapers Ltd.*, (1993) AC 534, Lord Keith treated freedom of expression as part of Common Law. Recently, in *R v. Secretary of State for Home Department, Ex P. Simms*, [1999] 3 All ER 400 (H.L.), the right of a prisoner to grant an interview to a journalist was upheld treating the right as part of the Common Law. Lord Hobhouse held the policy of the administrator was disproportionate. The need for a more intense and anxious judicial scrutiny in administrative decisions which engage fundamental human rights was re-emphasised in *R v. Lord Saville Ex. pt.*, [1999] 4 All ER 860, 870, 872 (CA). In all these cases, the English Courts applied the 'strict scrutiny' test rather than describe the test as one of 'proportionality'. But, in any event, in respect of these rights 'Wednesbury' rule has ceased to apply."

- "38. However, the principle of 'Strict Scrutiny' or 'proportionality' and primary review came to be explained in *R v. Secretary of State for the Home Department, ex. P. Brind*, (1991) 1 A.C. 696. That case related to directions given by the Home Secretary under the Broadcasting Act, 1981 requiring BBC and IBA to refrain from broadcasting certain matters through persons who represented organisations which were prescribed under legislation concerning the prevention of terrorism. The extent of prohibition was linked with the direct statement made by the members of the organisations. It did not however, for example, preclude the broadcasting by such persons through the medium of a film, provided there was a 'voice-over' account, paraphrasing that they said. The applicant's claim was based directly on the European Convention of Human Rights. Lord Bridge noticed

that the Convention rights were not still expressly engrafted into English Law but stated that freedom of expression was basic to the Common Law and that, even in the absence of the Convention, English Courts could go into the question (See p. 748-749).

".... Whether the Secretary of State, in the exercise of his discretion could reasonably impose the restriction he has imposed on the broadcasting organisations"

and that the Courts were "not perfectly entitled to start from the premise that any restriction of the right to freedom of expression requires to be justified and nothing less than an important public interest will be sufficient to justify it."

Lord Templeman also said in the above case that the Courts could go into the question whether a reasonable minister could reasonably have concluded that the interference with this freedom was justifiable. He said that 'in terms of the Convention' any such interference must be both necessary and proportionate (ibid pp. 750-751)."

"39. In a famous passage, the seeds of the principle of Primary and Secondary review by Courts were planted in the Administrative law by Lord Bridge in the Brind case. Where convention rights were in question the courts could exercise a right of primary review. However, the Courts would exercise a right of secondary review based only on Wednesbury principles in cases not affecting the rights under the Convention. Adverting to cases where fundamental freedoms were not invoked and where administrative action was questioned, it was said that the Courts were then confined only to a secondary review while the primary decision would be with the administrator. Lord Bridge explained the primary and secondary review as follows:

"The primary judgment as to whether the particular competing public interest justifying the particular restriction imposed falls to be made by the

Secretary of State to whom Parliament has entrusted the discretion. But, we are entitled to exercise a secondary judgment by asking whether a reasonable Secretary of State, on the material before him, could reasonably make the primary judgment".

- “67. But where, an administrative action is challenged as 'arbitrary' under Article 14 on the basis of *Royappa* (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the *Wednesbury* test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In *G.B. Mahajan v. Jalgaon Municipal Council*, [1991] 3 SCC 91, at page 111, Venkatachaliah, J, (as he then was) pointed out that 'reasonableness' of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of *Wednesbury* rules. In *Tata Cellular v. Union of India*, [1994] 6 SCC 651 (at PP. 679-680); *Indian Express Newspapers v. Union of India*, [1985] 1 SCC 641 at 691), *Supreme Court Employees' Welfare Association v. Union of India and Anr.*, [1989] 4 SCC 187, at. 241 and *U.P. Financial Corporation v. GEM CAP (India) Pvt. Ltd.*, [1993] 2 SCC 299, at 307, while Judging whether the administrative action is 'arbitrary' under Article 14 (i.e. Otherwise then being discriminatory), this Court has confined itself to a *Wednesbury* review always.”
- “69. The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of 'arbitrariness' of the order of punishment is questioned under Article 14.”

“71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.”

13 The Apex Court in the case of *B.C.Chaturvedi v/s Union of India*, reported at **(1995) 6 SCC 749**, has observed in paragraph 18 as under:-

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High

Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

14 While considering the issue of proportionality of punishment to be inflicted on an employee, the Apex Court in the case of *Union of India v/s G.Ganayutham* reported at **(1997) 7 SCC 463**, has held in paragraphs 30, 31, 32, 33 and 34 as under:-

“30. We may also state that even if the Courts in England by virtue of incorporation of the Convention should become the primary Judges of the validity of administrative decisions, still they would exercise great judicial restraint in matters concerning governmental policies, national security, or taxation, finance and economy of the country and similar such matters of grave public policy. This restraint on the part of the judiciary is described in administrative law as giving a greater margin of appreciation to the administrator in certain areas. See *Brind*, (Lord Templeman, (p.751), *Ackner* (p.762) and *Lord Lowry* (p.766). Similar principles have been laid down by this court while testing the validity of legislative measures in the context of Article 19(2) to (6). The Courts would give a 'reasonable margin' to the legislature (*Manoharlal vs. State of Punjab* [1961 (2) SCR 343] in several situations.

31. The current position of proportionality in administrative law in England and India can be summarised as follows:-

(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was illegal or suffered from

procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bonafide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3)(a) As per Bugdaycay, Brind and Smith, as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he had done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The

secondary judgment of the Court is to be based on *Wednesbury* and *CCSU* principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Article 19, 21 etc. are involve and not for Article 14.

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of 'proportionality'. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to 'irrationality', there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in 'outrageous' defiance of logic. Neither *Wednesbury* nor *CCSU* tests are satisfied. We have still to explain '*Ranjit Thakur*'.

33. In *Ranjit Thakur*, this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, *Wednesbury* and *CCSU* tests were satisfied. Similar view was taken in *Indian Oil Corporation vs. Ashok Kumar Arora* [1997 (3) SCC 72], that the Court will not intervene unless the punishment is wholly disproportionate.

34. *In such a situation, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C.Chaturvedi's case that the Court might, - to shorten litigation - think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B.C.Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different). For the reasons given above, the case cited for the respondent, namely, State of Maharashtra vs. M.H.Mazumdar cannot be of any help."*

15 The Apex Court has then summarized the law on the point of punishment appearing to be shockingly disproportionate in the matter of *Chairman & Managing Director, United Commercial Bank v/s P.C.Kakkar* reported in **(2003) 4 SCC 364**, and concluded that the Court should not interfere with the decision of the Employer unless the said decision appeared to be an act of procedural impropriety or was illogical or which shocked the judicial conscience in a sense that the decision could be said to be in defiance of logic or moral standards. It was thus, concluded in paragraph 15 of the said judgment as under:-

- "15. *It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of*

law. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It *per se* would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

16 Standing Order 25(6) of the Model Standing Orders provides that while awarding punishment, the Disciplinary Authority has to take

into account the gravity of the misconduct, previous record if any and any mitigating or aggravating circumstances that may exist. This Court has considered this position in *Bajaj Auto Limited v/s Kalidas Devram Patil* reported in **2000(2) Bom.C.R. 630 : 2000 (84) FLR 157**. The judgment of the Apex Court in the case of *Palghat BPL & PSP Thozilali Union v/s BPL India* reported in **1996(1) CLR 368**, was also considered. The Division Bench of this Court has upheld the view taken by the learned Single Judge in the said matter.

17 As such, in the instant case, the very moment it is concluded that the punishment was not shockingly disproportionate and could not have been interfered with, the relief granted by the Labour Court to the Respondent/Workman will have to be quashed and set aside. However, peculiar developments pending the hearing of this petition cannot be disregarded. The Respondent has been reinstated long ago and has superannuated about 13 years ago. In such circumstances, ends of justice would be met by setting aside the conclusions of the Labour Court to the extent of grant of 70% back-wages, in the light of the statement made by the Petitioner that the said direction of the Labour Court has not been implemented since this Court stayed the said direction by its interim order dated 26.06.1997.

18 It is in these circumstances that the impugned judgment of the Labour Court dated 07.07.1993 deserves to be modified without remitting the revision petition to the Industrial Court since I have considered the legality of the judgment of the Labour Court.

19 In the light of the above, this petition is partly allowed. The impugned judgment of the Labour Court dated 07.07.1993 is modified by setting aside the direction of payment of back-wages to the Respondent. The impugned order of the Industrial Court, therefore, does not survive and the Revision Petition stands disposed of.

20 The Petitioner shall calculate the amount of gratuity not paid to the Respondent as yet and shall pay the said amount within a period of TWELVE WEEKS from today. Insofar as the provident fund is concerned, the Respondent shall approach the appropriate authority under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in the event the said amount is still not paid.

21 This petition is partly allowed in the above terms. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)