

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

I.

Civil Writ Petition No.7372 of 2012

Date of decision: 28.8.2015

Maruti Suzuki India Limited

... Petitioner

Versus

Presiding Officer and another

... Respondents

II.

Civil Writ Petition No.6984 of 2013

Date of decision: 28.8.2015

Ram Pal Singh

... Petitioner

Versus

Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Harsh Aggarwal, Advocate,
for the petitioner.

Mrs.Abha Rathore, Advocate,
for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This order will dispose of the aforesaid two cross writ petitions
filed against the same impugned award dated 20th January, 2012 passed by
Labour Court-I, Gurgaon (for short "POLC"). The facts are taken from

CWP No.7372 of 2012 for convenience.

Maruti Suzuki India Limited has approached this Court assailing the impugned award praying that it deserves to be set aside in toto and Industrial Dispute Reference No. 460 of 1999 declined whilst the workman pleads that it be set aside partially in denying 75% of the arrears of back wages without legal justification and the workman be held entitled to one hundred percent back pay and in the alternative the writ court may consider washing out the reduced punishment altogether and to pay the workman full back wages since the lesser punishment of withholding three increments with permanent effect awarded by the POLC is harsh and oppressive. This is what has been projected by the opposing sides.

The POLC has exercised its discretionary powers as provided by Section 11-A of the Industrial Disputes Act, 1947 [in short, “the Act”] and has scaled down the punishment of dismissal from service and has substituted major punishment of dismissal to that of stoppage of two increments with cumulative effect and has in addition awarded 25% of the arrears of back wages computed on the basis of the last drawn salary from the date of demand notice till the date of reinstatement to service.

The POLC has exercised its appellate powers against the punishment order of dismissal from service under Section 11-A to award lesser punishment after noticing the short order of the Supreme Court rendered in **Hindustan Machine Tools Limited v. Mohd. Usman**; (1984) 1 SCC 152 which ironically was a case where labour court had reduced punishment of termination to stoppage of increments for two years. The Supreme Court in this case has recognized the power of the Labour Court to tinker with the punishment imposed by the employer. Though the order is a

short one but reflects the earlier dicta of the Court in **Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd v. The Management**, AIR 1973 SC 1227 the first time the Supreme Court had occasion to deal with the new law introduced in Section 11A of the I.D. Act, 1947. I would come to that ruling later in the discussion.

To invoke Section 11 A, it is necessary that the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. Under Section 11 A the Tribunal may hold that the proved misconduct does not permit punishment and in such cases under such circumstances award to the workman any lesser punishment instead. If it is disproportionately excessive, the Labour Court can reduce the punishment in its discretion judiciously exercised on such terms as it thinks fit. Section 11-A confers jurisdiction on the Labour Court a wide jurisdiction to evaluate severity of misconduct and to assess whether the punishment imposed by the employer is commensurate with the gravity of proven misconduct. It would have to examine whether the inquiry conducted by the management is procedurally fair and proper or is defective to the point of prejudice or in violation of the rules of natural justice. A case of defective inquiry stands on the same footing as no inquiry. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by the Supreme court in **Management of Panitole Tea Estate v The Workman**, AIR 1971 SC 2171, within the judicial decision of a labour court or tribunal. The High Court while judicially reviewing the award passed in exercise of jurisdiction under Section 11-A is not undertaking re-examination of the question of adequacy or inadequacy of material for justifying interference.

Even in cases where the Labour Court comes to the conclusion that the domestic enquiry was conducted properly and no prejudice was caused to the worker, it can still analyze the evidence to decide whether the dismissal of the workman was justified and in order. This is within the domain of the Labour Court's jurisdiction, that no other Court exercises. The Labour Court in appropriate cases can direct reinstatement when found justified while interfering with the inquiry and punishment imposed by the employer it may deny reinstatement but award monetary compensation in lieu thereof. Its jurisdiction under Section 11 A can be exercised in many permutations and combinations but its decision must be rooted in evidence and the probabilities arising from it. For the first time in Section 11 A legislature in 1972 gave power to the labour court to satisfy itself whether misconduct is proved. The choice of relief to be granted when the stage is set to interfere in a case on quantum of punishment is an intricate part of the judicial process where only the accumulated wisdom of the labour court will hold good being the last court of fact.

I have heard Mr. Aggarwal and Mrs. Abha Rathore at considerable length on the issues involved and with their able assistance examined the case papers. In its conclusion, I have hardly any reason to differ with the view taken by the Labour Court on the materials on record and to set about tinkering with or substituting punishment from dismissal to the one awarded in the garb of judicial review unless there is a fundamental flaw in the reasoning adopted by the court *a quo*. Section 11A was introduced in the ID Act on December 9, 1971 by Act 45 of 1971. The first opportunity the Supreme Court had to examine the change brought about by the amendment was in the leading case of **Workmen of Firestone Tyre**

and Rubber Company of India (Pvt.) Ltd v. The Management, AIR 1973 SC 1227. The Court culled out the principles of the newly inserted law in the ID Act [15.12.1971] inter alia enunciating:-

“Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may 'hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings

recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by section 11 A, Another change, that has been effected by section 11A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the, misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under section 11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman any lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by section 11A.”

The facts briefly are that the respondent-workman Ram Pal Singh was working as Technician Grade-V with the management from 2nd March, 1984. He had served for about a decade in the paint shop and his work and conduct was found satisfactory and his record was so far unblemished. He was awarded various certificates in respect of one hundred percent attendance of duty during the period from 1986-87 to 1995-96 which were produced on record as Exs. PW-1/1 to PW-1/6 respectively which confirm that the workman was punctual and regular in attending to

his duties assigned. He was awarded many cash awards in recognition of his good service till the equilibrium was shattered by an incident narrated below.

It all started with disciplinary proceedings initiated by two charge sheets served by the management on him, i.e., the one dated 8th July, 1996 and the other close at heels dated 9th August, 1996. He was denied an opportunity and right to submit reply to both the charge sheets to explain the circumstances that led to his absence which step in the proceedings was valuable and he lost it by his absence for a period which is not unreasonable long when cause was shown if not proved at the hands of the Inquiry Officer. The charge was of absence from duty without intimation or prior approval. The management called him a “habitual absentee” who was involved in a criminal case registered in Police Station Sadar, Gurgaon. The criminal case had nothing to do with his employment. The Inquiry Officer held him guilty of misconduct in both the charge sheets. The enquiry report was submitted to the disciplinary authority which led to his dismissal from service.

Aggrieved by the dismissal order, the respondent-workman raised an industrial dispute by serving a notice of demand for justice. He claimed unfair dismissal and sought reinstatement to service with consequential benefits. The conciliation proceedings failed and the appropriate Government on receipt of the failure report under Section 12 (3) of the Act referred the dispute under Section 2A to the file of the Labour Court-I, Gurgaon for adjudication on whether the dismissal order was justified. The court framed issues for trial. Issue No.2 was with respect to the legality, validity and fairness of the enquiry and it was taken up as a

preliminary issue. Vide order dated 3rd December, 2009, Labour Court-I, Gurgaon held that the enquiry was fair and proper. On the remaining issues, the Labour Court did not fault the inquiry inasmuch as the procedure for holding inquiries was followed and an opportunity was given to the workman to lead his evidence. The workman did not challenge the order on the preliminary enquiry and the same became final. Neither of the parties led any further evidence pro and contra before the labour court and depended on it in their own ways.

In the connected Civil Writ Petition No.6984 of 2013 preferred by the workman, the story of his absence is narrated in detail. He says that on 31st May, 1996 he had to leave all of a sudden for some urgent work which was unforeseen. He sent leave application for 4 days to the management. While in Khatauli Muzzafarnagar, the destination point he fell sick and sent an application for extension of leave along with a medical certificate in support. Thereafter, he submitted extension application praying for sanction of leave. These were also supported by medical certificates. The petitioner at that time had 133 days medical leave available to his credit in his leave account. The management did not sanction the medical leave and rejected the same. It was his case that the rejection order was not remitted to him as required by the Certified Standing Orders of the company. The sum total of his absence was for 38 days which he explained was the result of illness which was beyond his control in the background of a criminal case he faced but was discharged being innocent of the charge.

It is in such circumstances that he was issued the first charge sheet for absence from duty. The second charge sheet followed the next day on the charge of submitting false medical certificates. These charge sheets

were not served on him at his local address available in the company record nor were directed to his native place Muzzafarnagar where he fell sick and was under medical treatment. The leave applications sent from his native place disclosed his whereabouts during the period of absence. The petitioner-cum-respondent says that the management seemed to be in hurry and the petitioner got no chance to reply to the charge sheet which he says for the first time was handed over to him by the Inquiry Officer appointed to hold the inquiry. The foundation of the action taken was an FIR lodged in which the petitioner was not even named as an accused. His name was however added during the police investigation. The petitioner was discharged on 30th March, 2007 by the Judicial Magistrate, 1st Class. The discharge order was upheld by the court in criminal revision and that was the end of the tribulation.

The management brought out a letter on the inquiry file obtained from the treating doctor dated 31st July, 1996 falsifying the medical certificates which were not issued by him. It was said that the workman was in police custody during the time. The workman refuted the charge before the Inquiry Officer and affirmed that he took medical treatment from the same doctor after the previous medical certificate dated 31st July, 1996 which cast serious doubt on the letter procured by the management through private investigation. These documents were exhibited on record before the Inquiry Officer and then the Labour Court. The doctor furnished a letter to the workman in both Hindi and English where he accused the management of exercising undue influence over him in extracting certificate dated 26th March, 1997 from him by force. These were also exhibited on record as Ex.Pw1/24 and PW1/25. These letters were not considered worthy of fair

and impartial investigation to establish their authenticity by the Inquiry Officer to find out the truth as to why there were two sets of letters from the same doctor, and by ignoring this material and mulling it over, the Inquiry Officer held that the medical certificates were “wrong”. This course of inaction had prejudiced him at the inquiry. Resultantly, the workman was dismissed from service on 22nd December, 1997 which led to demand notice dated 9th February, 1998.

Mrs. Abha Rathore arguing for the workman submits that the inquiry was neither fair nor proper nor the show cause notice proposing the severest punishment was justified and the punishment order itself is totally disproportionate to the gravity of the misconduct and was uncalled for in its severity. The severest punishment of dismissal from service is not justified and in this the labour court awarding lesser punishment is also excessive and deserves to be further reduced at least from major to minor punishment. The workman was implicated in a false criminal case from which he stands duly discharged. He is an innocent person. Merely because he had to leave for his home town for 4 days and was stuck in a human problem for more time which eventually stretched to 38 days viewed as against a decade of valuable service rendered to the management amply off sets the period of absence calling for much lesser penalty which absence was occasioned by reasons beyond the control of the workman. She would pray for an order of reinstatement with full back wages erasing even the lesser punishment imposed by the labour court by resort to Section 11A of the Act.

Mr. Harsh Aggarwal appearing for the management submits that the workman had a criminal case registered against him but he admits that it had nothing to do with the employment. He also does not dispute that

the workman was discharged. He, however, submits that the Labour Court should not have interfered in the matter and reduced the punishment. Unauthorized absence coupled with the act of submission of bogus medical certificates to justify absence is a serious matter for which the punishment of dismissal is proper measurement of misconduct meted out by the punishing authority commensurate with the gravity of the misconduct and any interference would tantamount to giving leverage to indiscipline in the rank and file of the organization. It would also amount to putting premium on misconduct. If this is permitted then instilling discipline will be a lost cause. Even the labour court suffers limitations just as other courts have in interfering in punishments awarded for good and sufficient reasons and the choice of the employer to select a penalty from the range of punishments available under the certified standing orders is the business of the management as it is the best judge in the subject matter. He cites Clauses 20.39 and 20.68 of the Certified Standing Orders of the Company which were statutory in nature and applicable to the workman which enumerated as misconduct the act of obtaining or attempting to obtain leave on false pretension, abetment or attempt to commit any of the above acts of misconduct which run through the entire gamut of listed misconducts. He submits that the management got a written intimation from the Police Station Sadar, Gurgaon on 31st May, 1996 that the workman was wanted in a criminal case under Sections 420, 467, 468, 471 and 216 IPC when the police enlisted the help of the management to direct the workman to present himself in the Police Station for investigation. It was for these reasons that the workman abruptly left the factory and was about, without prior permission and had started absenting himself from duty thereafter with

effect from the forenoon of 31st May, 1996 and remained missing till 2nd March, 1997 on which date his services were placed under suspension. In order to cover up his unauthorized absence the workman started submitting false medical certificates. These were not genuine and the workman was duly informed about the same. This is how the charge sheet came to be issued. The management made an enquiry at Muzzafarnagar in the clinic of Dr. S.N.Kaushik, Budhana Road, Khatauli, Muzzafarnagar [U.P.]. During private investigation carried out by the management, Dr.Kaushik certified that he had not provided any medical treatment to the workman nor was he suffering from any ailment, nor had the doctor any facility to provide treatment for such an ailment. It was, therefore, obvious that for certain offences committed by the workman, the Police was after him. It was for these reasons that his continuance with the management was found no longer conducive to the interest of the company in general and discipline in particular and further confidence could not be reposed in him and as such he was dismissed from service on 22nd December, 1997 [P-4].

If the Police was after him on a false case as proved by the discharge order passed by the territorial criminal court and upheld by the superior court, then it cannot be said that the workman was guilty of offences registered to which he was sought to be connected by the police in the course investigation which accusation stands falsified by court orders. If he went underground to save himself from arrest on a false charge the workman was within his right to seek remedies to prove his innocence on a trumped up charge and seek the protection of his rights under Article 21 of the Constitution. Quite evidently this was the causa causans of the absence. It may be true that he remained in police custody for some time after arrest but

the accusation against did not hold water as was later revealed. The workman had become in a surrealistic way a creature of circumstances.

Mr. Aggarwal submits that it is specifically mentioned in the dismissal order that the management has lost trust in the workman and he is therefore not a fit person to retain in employment and the Labour Court has thrust him upon them. There are no extenuating circumstances warranting lesser punishment. Besides, the Labour Court itself had certified that the enquiry conducted was fair and proper and therefore the dismissal order could not be faulted as the choice of punishment was in the subjective satisfaction of the employer and not within the domain of the Court. The principles of Wednesbury arbitrariness is not to be readily applied to labour laws to entrench upon the discretion provided in Section 11A to award lesser punishment in an appropriate case. The Labour Court is itself bound by the general principles of law enunciated by the Courts that despite power under Section 11A of the Industrial Disputes Act, it cannot apply whimsical discretion to reduce punishment and award lesser punishment of withholding of three increments with cumulative effect which would cause reinstatement to service. The swing of the pendulum is far too wide and of the mark. Merely because the penalty imposed by the labour court is still major punishment it is not the same thing as dismissal from service. The labour court failed to weigh the factor of loss of confidence. It is no doubt true that loss of confidence can be pleaded at any stage of the pleadings and in this case it was in fact pleaded by the management. It was mentioned in the order of dismissal but that does not mean that it will restrict or curtail the discretion of the Labour Court to be exercise judiciously in evaluating the totality of the circumstances within the power it possesses under Section

11A of the Act and taking a just decision balancing the interests of capital and labour so that one does not eclipse the other.

This Court cannot be oblivious of the manner in which police investigates crime by lodging false FIRs and making defective investigation or investigation for private profit while performing public duties. The courts in India does not abhor persons charged with false criminal offences not to seek redress in courts of law such as applying for anticipatory bails etc. or to remain “underground” within the protection afforded by Article 21 of the Constitution which protects life and liberty of citizens so long as they are not seen to be running away from arms of the law or absconding. If the police cannot protect the life and liberty of a citizen, then it does not mean that an innocent person must suffer arrest and detention in police custody or in a judicial remand for no sufficient cause or legal justification. These are accepted axioms of the criminal law justice system and if the workman remained away from work for a short period due to force of circumstances, then he was not to be treated as a criminal or unfit for future service. Arrest and detention in cases can by itself be a reasonable cause and justification for not reporting for duty. Merely not reporting for duty is *per se* a misconduct by itself. The workman did what was within his powers to explain his absence but those pleas were rejected. I think what the Labour Court has done is that it has prevented a mountain to be made on a mole hill in the scale of proportionality. It is within the power of the management to refuse leave which is within its province. The management's view of misconduct is personal to them in the nature of the industrial activity involved. The larger the employee base the less the absence of one worker is felt unless work itself stopped. After all Ram Pal Singh had 133 days of

earned leave to his credit and the absence could have been off set in the account. This was not disputed. Heavens had not fallen. The action of inflicting the extreme penalty of dismissal rightly did not find favour of the labour court in whom special rights and discretionary powers were vested and they were not flagrantly exercised without and foundation. **Firestone** case sounded the bugle call which still reverberates in the courtroom.

Mr. Aggarwal then relies on **Usha Breco Mazdoor Sangh v. Management of M/s Usha Breco Limited**; (2008) 5 SCC 559 to urge that the decision of the Labour Court should not be based on mere hypothesis. It cannot overturn the management decision on *ipse dixit*. Its jurisdiction under Section 11A although is a wide one, it must be exercised judiciously. Judicial discretion cannot be exercised either whimsically or capriciously but on sound principles of law. He submits that the Labour Court in the first order passed in 2009 upholding the enquiry also recorded a finding that the acts of misconduct committed by the workman stood proven in domestic inquiry and therefore the Labour Court was precluded from entering and re-examination of that issue.

I would only say that when the Labour Court examined the issue of the domestic enquiry being fair and proper, it went at that stage only into questions of procedure and any comment made on the merits of the case is excessive and will have to be whittled down to suit the coming evidence otherwise there was nothing left to do for the remaining trial. Therefore, I am not inclined to agree with Mr. Aggarwal on this submission and would reject it. The labour court jurisdiction to apply Section 11A principles was not reached when it held that the inquiry conducted by the management was fair and proper. This only signified that the steps in the

inquiry proceeding was procedurally right. But it does not naturally follow that action of dismissal was not vindictive or by way of victimization or meted out as a measure of unfair labour practice. These issues were still alive even after the interim determination on issue no 2.

There are several decisions which Mr. Aggarwal has cited in this petition, all of which are binding precedents on the questions posed and answered by Court but they are not of any help to him in a disciplinary matter arising out of Section 10 (1) (c) read with Section 2A of the ID Act proceedings in cases of “discharge, dismissal, retrenchment or termination” which are deemed industrial disputes. It deserves notice that while Section 2A deals with four forms of severance Section 11A applies to disputes relating to only “discharge or dismissal” of workmen. Therefore, the drafters of the ID Act in their wisdom did not make “retrenchment” or “termination” punitive in nature. Equally, all four in 2A are forms of termination but every termination is not discharge, dismissal or retrenchment. This perspective has also to be kept in mind while examining work done by resort to Section 11A of the ID Act.

Broadly speaking and in my humble view the Constitutional Court while sits in original writ jurisdiction testing administrative action arising from domestic inquiries and punishments imposed by the disciplinary authority as against the jurisdiction the Writ Court exercises in judicial review of awards of labour courts and tribunals it applies to the former the tests of reasonableness and proportionality with respect to quantum of punishment on restrictive principles of Wednesbury arbitrariness. There is thus a marked distinction between the Constitutional Court and the Writ Court in Art. 226 while both jurisdictions are exclusively

exercised by the High Court. The first jurisdiction is plenary in character while the other is not since that jurisdiction is bound by the dimensions of statute that creates the tribunal whose work may come for review. However, the jurisdiction of the Labour Court under Section 11A of the ID Act is qualitatively different in content and character and is not circumscribed by *Wednesbury* principles as expounded by the constitutional courts in service law. Service law and labour law principles are not to be mixed up and their fine distinctions must be ever kept in mind while deciding on quantum of punishments. The labour court is empowered to interfere with the verdicts of the management and sit virtually as both the disciplinary authority and appellate authority over the decisions of the management. The jurisdiction under Section 11A is therefore exclusive to the Tribunals which is not possessed by the writ court in its original jurisdiction under Article 226 of the Constitution. Perhaps that is why so much judicial effort has gone into evolving principles of interference of which the most suitable was the principle evolved in England in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 KB 223 which set the standard of unreasonableness of public-body decisions that would make them liable to be quashed on judicial review which citation is now famously known as *Wednesbury* unreasonableness accepted as the best available standard of measurement of proportionality. *Wednesbury* principles are the order of the day in courts in India and accepted in the Indian law as the guiding philosophy in decision making.

The applicability of the principle of 'proportionality' in administrative law was considered exhaustively in [Union of India v.](#)

[Ganayutham](#), (1997) 7 SCC 463 where the primary role of the administrator

and the secondary role of the Courts in matters not involving fundamental freedoms, was explained. The relationship between service law and proportionately, classification and arbitrariness were explained further by M. Jagannadha Rao, J. speaking eloquently for the Supreme Court in Om Kumar and others v. Union of India; [2001] 2 SCC 386 further refining the law His Lordship authored in Ganayutham case (supra). A few brilliant extracts of the judgment in Om Kumar case (supra) will make the position clear. They are reproduced:-

“(a)(I) Classification test under Article 14:

Initially, our Courts, while testing legislation as well as administrative action which was challenged as being discriminatory under Article 14, were examining whether the classification was discriminatory, in the sense whether the criteria for differentiation were intelligible and whether there was a rational relation between the classification and the object sought to be achieved by the classification. It is not necessary to give citation of cases decided by this court where administrative action was struck down as being discriminative. There are numerous. (ii) Arbitrariness test under Article 14:

But, in [E.P. Royappa v. State of Tamil Nadu](#), [1974] 4 SCC 31, Bhagwati, J. laid down another test for purposes of Article 14. It was stated that if the administrative action was 'arbitrary', it could be struck down under Article 14. This principle is now uniformly followed in all Courts more rigorously than the one based on classification. Arbitrary action by the administrator is described as one that is irrational and not based on sound reason. It is also described as one that is unreasonable.

(b) If, under Article 14, administrative action is to be struck down as discriminative, proportionality applies and it is primary review. If it is held arbitrary,

Wednesbury applies and it is secondary review:

We have now reached the crucial aspect directly arising in the case. This aspect was left open for discussion in future in Ganayutham but as the question of 'arbitrariness' (and not of discriminatory classification) arises here, we wish to make the legal position clear.

When does the Court apply, under Article 14, the proportionality test as a primary reviewing authority and when does the Court apply the Wednesbury rule as a secondary reviewing authority? From the earlier review of basic principles, the answer becomes simple. In fact, we have further guidance in this behalf.”

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“It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority.”

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“Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the Courts by applying proportionality. However, where administrative action is questioned as 'arbitrary' under **Article 14**, the principle of secondary review based on Wednesbury principles applies.”

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“Proportionality and Punishments in Service Law:

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.

In this context, we shall only refer to these cases. [In Ranjit Thakur v. Union of India](#), [1987] 4 SCC 611, this Court referred to 'proportionality' in the quantum of punishment but the Court observed that the punishment was 'shockingly' disproportionate to the misconduct proved. [In B.C. Chaturvedi v. Union of India](#), [1995] 6 SCC 749, this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in Ganayutham.

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, 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.”

Paying due regard to the evidence available on record as discussed and appreciated by the Labour Court to which any detailed reference is not necessary, I would not think that the Labour Court exceeded

its jurisdiction under Section 11A in granting relief of reinstatement and awarding lesser punishment than the extreme punishment inflicted by Maruti Udyog. The misconduct must fit the punishment and the punishment the misconduct. In this exercise, the Labour Court looked into the past record of the workman which was not taken into consideration by the management while passing the order of severest punishment of dismissal. The Labour Court faulted the use of the expression, "habitual offender" in the charge sheet whereas the record produced on the file did not support such a wild and reckless allegation. In the past, the workman had 100% attendance during the years 1986-87 to 1994. He had put in 10 years service and has been pursuing the case for even longer to seek justice. He was a married man with children and family to look after and the dismissal must have brought him on verge of starvation. The Labour Court is the last court of fact and law and is in a position to gauge litigants appearing before them at the grass root level of the rough and tumble of the labour court and its intuitive judicial reflex gained by experience is of special quality and when mixed together with the evidence on record makes it the best possible court for doing justice in labour matters. Interference with the awards of Tribunals, of which the labour court is one, suffers restrictions on the power of the High Court while reviewing orders and awards as explained in **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477. I would therefore not interfere in the writ petition filed by the management and order that the same is liable to be dismissed as no palpable injustice has resulted. The award does not suffer from perversity, irrationality or a gross misreading of evidence which might vitiate the proceeding. There are no errors apparent on the face of the record, no fundamental flaws of law or fact in the

impugned award which is legally sustainable.

Coming to the writ filed by the workman, Mrs. Abha Rathore is also faced with the same restrictions in the exercise of jurisdiction by this Court as provided in Article 226 of the Constitution. The Labour Court's choice of punishment of stoppage of two increments with cumulative effect is neither arbitrary nor is the selection out of the hat. The findings returned are also not open to be disturbed in the scheme of the discretionary powers vested in the Labour Court on the materials on record. When Ram Pal Singh has not got a clean chit from the Labour Court under Section 11A of the Act, then it would not be possible for me to tinker with the award of back wages @ 25% from the date of demand notice till the date of reinstatement.

However, a limited modification of the award may be justified inasmuch the award restricts monetary relief to 25% back wages to the last drawn salary which was payable in the year 1997. This is not too fair and equitable and has a bit of penny pinching. The principles of last drawn salary or last drawn wages is a concept linked with Section 17B of the I.D. Act and should ordinarily not be applied in disciplinary cases since the Labour Court has granted reinstatement with continuity of service and this means that the order of dismissal has become non-existent. If the order of dismissal has become non-existent, then the workman has to be put back to the status on the date of dismissal. The Full Bench dicta of this Court in **Radha Ram v. Municipal Committee, Barnala**; 1983 PLR 21 is a case in point. The Full Bench held that once the relief of setting aside or quashing the order of termination has been granted it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from

declaration of that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. Ordinarily full back wages are to be awarded since the workman will be deemed to be in service since 1997. If the order of dismissal is found harsh and oppressive by the Labour Court for good and sufficient reasons then restricting 25% back wages calculated on the last drawn salary may also be harsh and oppressive when the case is not one under Section 25F of the Act where the Labour Court considers the issue of reasonable compensation in lieu of reinstatement or where reinstatement is ordered it may deny back wages wholly or in part, depending on the facts as are presented from case to case.

Therefore, in the light of the legal position as explained above, I am inclined to think the award of the Labour Court deserves to be modified to the extent that the petitioner would be notionally entitled to increments from the date of dismissal. If any person junior to the petitioner in the cadre and in service has been granted promotion etc in the meanwhile then the workman would also have right of parity of pay granted retrospectively but computed notionally so as to bring his pay at par with such junior but without a right to monetary benefits prior to the date of the award by stepping up of pay as were given to the juniors appointed to service in 1997 or thereabout except as indicated below. All other benefits of pay and allowances will be worked out retrospectively from the due dates with reference to juniors notionally but the monetary benefits of stepped up pay and allowances as revised from time to time would be admissible to the workman only from the date of the award, i.e., January 20, 2012 calculated in the above manner. However, the award of 25% of the arrears of back

wages will remain endorsed as directed in the impugned award.

With the above clarification and modification, the impugned award is upheld.

Accordingly, both the writ petitions are dismissed in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

August, 28, 2015
Paritosh Kumar