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

Date of Decision: 14th August, 2015

+ **W.P.(C) 3602/2010**

DELHI TRANSPORT CORPORATION

Indraprastha Estate, New Delhi

..... Petitioner

Through: Mr.Uday N.Tiwari and Mr.Sunil
Kumar Ojha, Advocates

versus

SHRI OM DUTT

..... Respondent

Through Mr.Anil Mittal and Ms.Komal
Aggarwal, Advocates

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a writ petition under Article 226/227 of the Constitution of India filed by the petitioner challenging the award dated 20.07.2009 passed by Presiding Officer, Labour Court, Karkardooma, Delhi in ID No.209/08/97 vide which the petitioner management was directed to reinstate the petitioner in the same post with same pay scale as at the time of his removal and the workman was held entitled for continuity of service with respect to his seniority, gratuity and pension, however, no backwages were awarded.

2. The respondent (hereinafter referred as 'workman') was employed as a bus driver in the petitioner corporation with effect from 30.09.1983. The depot manager of the petitioner issued a chargesheet to the workman for being absent without permission for a period of 133 days during the period 01.01.1991 to 31.12.1991. As the workman failed to respond to the charge, the departmental enquiry was initiated and the workman was intimated about the date of enquiry, however, he failed to appear as such, an ex-parte enquiry was conducted on 24.06.1993. The enquiry officer found the charges proved and gave his findings on 24.06.1993. Thereafter a show cause notice dated 27.07.1993 was served upon the workman proposing to remove him from the services of the corporation. As the workman did not reply to the show cause notice, the corporation based on his past record removed the workman from the services of the corporation on 15.12.1993. The workman made an appeal cum demand notice to the petitioner claiming his removal as illegal and unjustified and sought reinstatement with full backwages, continuity of service and other consequential benefits. Thereafter, the dispute was referred for adjudication by the government vide its order dated 17.12.1997 with the following terms of reference:

“Whether the removal of Shri Om Dutt from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. The workman filed his claim petition justifying his absence as being regularised under the rules as he remained without paid. He further pleaded that the chargesheet was illegal, invalid and infructuous whereas the enquiry was conducted by incompetent person in an unfair, improper manner without supplying the list of witnesses and documents. On the other hand, management in its reply contended that the workman was never terminated. He was removed after conducting a proper enquiry, as per rules and principles of natural justice. He was given full opportunity to defend himself.

4. Based on the pleadings of the parties, following issues were framed:-

- (i) Whether the enquiry was not conducted in accordance with the principles of natural justice and if so, its effect?
- (ii) As per the terms of reference?

5. The enquiry issue was decided against the petitioner management vide order dated 10.04.2008 holding that the enquiry was in violation of principles of natural justice. In the written statement the management had made a prayer that in case the management fails to prove the issue of validity of enquiry and the enquiry issue is decided against the management then management may be allowed to prove the charges before the Court. In view of this prayer, management was granted liberty to prove misconduct

against the workman. Evidence was led by the parties. Vide order dated 20.07.2009, the Labour Court allowed the claim of the workman by holding that the enquiry conducted against the workman was vitiated due to non-compliance of principles of natural justice, order of removal of workman is disproportionate to the “misconduct proved” because the master attendance register for the year 1991 was not produced and the charge of being absent without authorisation is defective in not specifying (a) the period for which no applications for leave were received by the petitioner; (b) the period for which applications for leave were received but rejected and the grounds for such rejection. The workman was accordingly directed to be reinstated in the same post with same pay scale as at the time of his removal within 30 days of the publication of the award.

6. Impugned award has been challenged by filing the present writ petition *inter alia* on the grounds that the impugned award suffers from grave irregularities and error apparent on the face of the record in as much as in the entire claim petition there was no pleading to the effect that the petitioner had not issued any notice to the respondent before conducting the enquiry. However, the learned Presiding Officer of the Labour Court vide order dated 10.04.2008 based on a mere argument by the AR for the respondent that he had not received proper notice before the enquiry, found

the enquiry proceedings to be vitiated for non-compliance with the principles of natural justice. The learned Presiding Officer refused to consider the petitioner's letter dated 07.06.1993 giving notice to the workman of the enquiry that was produced by the petitioner while responding to the respondent's argument. Instead, the Presiding Officer relied upon an inconsistent statement of a witness of the petitioner that the workman was present during the enquiry whereas actually he did not appear and was proceeded ex-parte.

7. It is further alleged that the impugned award is contradictory in so far as the Labour Court, on the one hand, found the misconduct of the respondent i.e., being absent without authorisation, on the other hand found the chargesheet issued by the petitioner to be defective in not framing distinct charges for the different periods for which he was absent. The workman in fact had admitted that he was absent for 133 days as such, he knew the necessary details and, therefore, no prejudice was caused to him. The charges framed were broad enough to put the workman on sufficient notice for being absent without his leave being sanctioned. Since the workman admitted that he was absent for a period of 133 days, this is the best evidence against the maker thereof. In either of the two cases i.e., application not submitted or application submitted but rejected, it would be

the misconduct within the meaning of para 4 of the Standing Orders. Accordingly, the absence of the master attendance register or lack of specific details was of no consequence. Moreover, the respondent neither participated in the enquiry nor did he plead that he was put to any prejudice because of the manner in which the charges were framed. Reliance was placed on *Delhi Transport Corporation vs. Sardar Singh* (2004) 7 SCC 574 for submitting that burden is on the employee who claims that there was no negligence or lack of interest to establish it by placing relevant materials. It was clear from the charges i.e., absence without permission for a period of 133 days that the petitioner was negligent and showed complete lack of interest in his work. Despite having held that the respondent's misconduct of unauthorised absence was proved, the Labour Court erred in granting reinstatement with continuity of service with respect to seniority, gratuity and pension. It was further submitted that power under Section 11-A of the Industrial Disputes Act, 1947 is not to be used to interfere with the quantum of punishment on irrational or extraneous factors or on compassionate ground. Reliance was placed on *Hombe Gowda Educational Trust and Anr. vs. State of Karnataka and Ors.* (2006) 1 SCC 430 and *L&T Komatsu Ltd. vs. N.Udayakumar* (2008) 1 SCC 224. The circular dated 08.04.1968 is merely for guidance and is not a binding rule. Reliance was placed on *Jage*

Ram vs. DTC 2013 LLR 478 and DTC vs. Tara Chand and Anr. (2013) ILLJ 562 Del. The reasons given by the Presiding Officer on the issue of punishment being disproportionate are erroneous in as much as non-production of the relevant master attendance register was not fatal as the factum of absence for a period of 133 days was not even disputed by the workman. In any case, this aspect is not at all material in determining the proportionality of the punishment. There was no vagueness in the charge, as such, it is submitted that the findings of the Labour Court are perverse and the same deserves to be set aside.

8. On the other hand, it is submitted by learned counsel for the workman that there is no infirmity in the order passed by the learned Labour Court vide which enquiry was held to be not proper in as much as, as per the enquiry report, the workman did not participate in the enquiry and, therefore, he was proceeded ex-parte whereas the petitioner's own witness deposed before the Court that the workman participated in the proceedings. Furthermore, the applications for grant of leave were duly sent by the workman. Instead of producing the relevant register for the year 1991, attendance register for the year 1992 was produced. The workman was never communicated regarding rejection of his leave. The petitioner corporation was having the best evidence regarding unauthorised absence which they

have failed to prove. The findings of the Labour Court does not call for any interference. Furthermore, while exercising jurisdiction under Article 226 and 227 of the Constitution of India, the High Court is to interfere only if the findings are perverse or is based upon no legal evidence. By placing reliance on *U.P.State Sugar Corpn. Ltd. vs. Kamal Swaroop Tondon* (2008) 2 SCC 41 and *Management of Madurantakam Co-operative Sugar Mills Ltd. vs. S.Viswanathan* (2005) 3 SCC 193, learned counsel submits that the petition is liable to be dismissed.

9. I have given my considerable thoughts to the respective submissions of learned counsels for the parties and have perused the record.

10. Record reveals that the workman was issued a chargesheet on the allegations that he absented from duties without prior permission for 133 days during the period from 01.01.1991 to 31.12.1991. On these allegations, a domestic enquiry was conducted against him wherein he did not appear before the enquiry officer, as such, on the recommendation of the enquiry officer, he was removed from the services of the corporation w.e.f 15.12.1993. He challenged his removal on the ground that it was unjustified and illegal. He also made an appeal cum demand notice to the management which resulted in reference of the dispute to the Labour Court where he filed a claim petition wherein it was never alleged that the enquiry was conducted

against him without giving any proper notice. However, the order dated 10.04.2008 passed by the Labour Court goes to show that during the course of the argument, the AR for the workman took the plea that the management conducted ex-parte enquiry without giving any proper notice to the workman before the enquiry officer. It is the submission of learned counsel for the petitioner that since the workman never disputed the service of notice for joining the enquiry proceedings, therefore, there was no occasion for the management to have proved the copy of the letter vide which notice was served upon the workman. However, when such a plea was taken during the course of the argument, the management wanted to place on record copy of the letter dated 07.06.1993 vide which the workman was given a notice of the enquiry to be held on 24.06.1993 but this document was not considered by the Labour Court by holding that it was not a proved document. It is his submission that in such an event the Labour Court could have remanded back the case to the enquiry officer in order to prove service of notice upon the workman which course was not adopted. There is force in the submission of learned counsel for the petitioner that since in the claim petition the workman had nowhere challenged that he was never served with the notice for joining the enquiry proceedings, as such, no such evidence was led by the management and, therefore, when during the course of

argument such a plea was taken for the first time, the management wanted to place on record the copy of the letter dated 07.06.1993 vide which the workman was given a notice of the enquiry to be held on 24.06.1993. However, the enquiry proceedings were held to be in violation of principles of natural justice also because of the reason that although the enquiry proceedings Ex.MW1/3 reflects that on 24.06.1993 the workman did not report for enquiry and, therefore, he was proceeded ex-parte, however, in his affidavit the management witness Beg Ram stated that the workman admitted the charges levelled against him, enquiry proceedings were given to him against his signatures, the workman was given an opportunity to take help of a co-worker which he refused and the enquiry proceedings were conducted. Thus, the enquiry proceedings Ex.MW1/3 is in contradiction to the affidavit filed by the management witness Beg Ram who happened to be the enquiry officer. This discrepancy in the enquiry proceedings and the statement of enquiry officer Beg Ram has appeared and, therefore, much emphasis is not required to be laid on the order dated 10.04.2008 passed by the Labour Court whereby the enquiry proceedings were held to be vitiated.

11. This is more so because in the written statement itself the management had taken a plea that in case the enquiry proceedings are held to be vitiated then the management should be given an opportunity to lead

evidence and, therefore, both the parties led evidence. The management examined Smt. Veena Sharma MW1 who reported the absence of the workman and who further stated in her affidavit that no application was given by the workman for 77 days. Though 18 days leave was sanctioned, there was no credit in the leave account of the workman thus he was treated as leave without pay. Leave for 38 days were rejected. The workman in his affidavit merely stated that he submitted the applications for each day. He relied upon Ex.WW1/1, a copy of the circular that if the leave is regularised there would be no misconduct. He admitted in cross-examination that he did not go for duty for 133 days. Learned Labour Court also relied upon the observations of Hon'ble Supreme Court in *Sardar Singh* (*supra*) and observed as under:-

“13. In the ruling of DTC vs. Sardar Singh, AIR 2004 SC 4161, the Hon'ble Supreme Court has observed the standing orders of the DTC. Para 7 and 8 of the ruling is worth reading here:

PARA : 7 In all these cases almost the whole period of absence was without sanctioned leave. Mere making of an application after or even before absence from work does not in any way assist the concerned employee.

The requirement is obtaining leave in advance. In all these cases the absence was without obtaining leave in advance. The relevant paras of the Standing Order read as follows:

'4. Absence without permission

(1) An employee shall not absent himself from his duties without having first obtained the permission from the authority or the competent officer except in the case of sudden illness. In the case of sudden illness he shall send intimation to the office immediately. If the illness lasts or is expected to last for more than 3 days at a time, applications for leave should be duly

accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of the DTS. In no case shall an employee leave station without prior permission.

(ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of the service with the Organisation.

19. General Provisions-Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as misconduct:

(a).....

(h) Habitual negligence of duties and lack of interest, in the Authority's work.'

PARA : 8 Clause 15 of the Regulations so far as relevant reads as follows:

'2. Discipline the following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority:

(i)

(vi) Removal from the service of the Delhi Road Transport Authority.

(vii) Dismissal from the service of the Delhi Road Transport Authority.

.....'

14. In the very ruling, the Hon'ble Supreme Court noted that 'when an employee absents himself from duty even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the standing order as quoted above relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of record come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. It is further observed that there cannot be any sweeping generalization. But at the same time, tell tale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

15. In the very ruling, it is noted that treating the period as leave by the employer without pay is not the same as sanctioned or approved leave."

12. The Labour Court further went on observing that the plea of the

workman that the charge is not maintainable since 18 days leave was sanctioned to him is not available to him since it had come in the evidence of MW1 that this period of 18 days though sanctioned, was treated without pay since there was no credit in the leave account. The workman has not rebutted by positive evidence to establish that he had 18 days of leave to his credit. His only plea was that he had been moving applications to the management but the rejection of leave was never communicated to him. As per Ex.MW1/1 for 77 days the workman did not move any application whereas for 38 days the application for leave was rejected. The daily attendance register of the workman was however not proved. Although the master attendance register Ex.MW1/2 was produced but the same pertained to the period starting from January, 1992 whereas the relevant period was 1991. However the learned Presiding Officer went on observing that though the relevant register was not produced however the evidence of MW1 went unrebutted regarding the absence of leave except for 18 days of leave which was sanctioned and that too with a rider. The workman had failed to show the extraordinary circumstances under which he had to obtain the leave. He had however relied upon a circular and it was observed that even this circular goes against the interest of the workman for the management may treat such irregularity as misconduct, provided the chargesheet is amended

13. By relying upon **Sardar Singh** (*supra*) and the spirit of Rule 4 of the Standing Orders, it was observed that long period of absence except in the cases of sudden illness not beyond the period of three days are to be supported by medical certificate. The Standing Orders on the point of absence without permission show that habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee to be treated as an absconder resulting in termination of service. However, the Presiding Officer erred in observing that no such charge is framed. Moreover, it was observed that the order of removal is highly disproportionate to the misconduct for the following reasons:-

- a) Ex.MW1/2 the master attendance register relied upon by the management to sustain the charges are for the period of year 1992, where as the absence imputed relates to year 1991.
- b) The charges are not amended as per the circular dealing with subject of habitual absence.
- c) that Rule 4 of standing orders are not followed.
- d) That the charge is defective in not specifying the periods of leave for which the charges should have been distinctly framed viz., the period of leave for which no applications were received, the period of leave for which

applications received but rejected and depicting such grounds for rejection in the charge sheet itself.

e) that in the absence of such distinct charges, the workman was prevented from tendering proper explanation.

f) the past record of the workman does not show the habitual absence but other entries vis. misbehaviour, employment of unparliamentary language, without uniform, refusal to go on duties, causing accident etc. which were dealt separately under the penalties permitted.

14. These findings of the Labour Court are perverse in as much as even if the master attendance register for the year 1991 was not produced or the period of leave was not specified for which no application was received or the period for which application received but rejected cannot be sustained keeping in view the fact that the chargesheet was issued to the workman specifying that he remained absent for 133 days during the period 01.01.1991 to 31.12.1991. It is pertinent to note that the workman in his cross-examination has admitted that he did not come to duty for 133 days during January, 1991 to December, 1991. Moreover, he admitted the factum of receiving the chargesheet Ex.WW1/M1. It is a matter of record that despite receiving the chargesheet, he did not submit any reply to the same. Thereafter, the departmental enquiry was initiated against him and in the

claim petition it was nowhere alleged by him that he was not given notice of the enquiry to be held on 24.06.1993 rather in his cross-examination dated 09.08.2000 he admitted that he had received the notice of the enquiry but did not appear before the enquiry officer. Yet such a plea was taken during the course of argument before the Presiding Officer which went in his favour. Not only that after a finding was given by the enquiry officer that the workman was liable to be removed from service he was given a show cause notice to which also he did not submit any reply. Even before the Court no evidence was led by the workman for showing that the applications for grant of leave were moved by him. The basic emphasis is that the leave for 18 days were sanctioned but the same were treated as leave without pay. Similar plea was taken in ***Sardar Singh*** (*supra*) where Hon'ble Supreme Court relied upon earlier decision rendered in ***State of M.P. vs. Harihar Gopal*** (1969) SLR 274 (SC) where it was observed by a three Judge Bench that even when an order is passed for treating absence as leave without pay after passing an order of termination, that is, for the purpose of maintaining record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. It was held that the conduct of the employee is nothing but irresponsible in the extreme and can hardly be justified. The charge was misconduct by absence. In view of the governing

Standing Orders unauthorised leave can be treated as misconduct. It was further held that conclusion regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when the same is unauthorised. Burden is on the employee who claims that there was no negligence and/or or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In Clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which render the absence unauthorised. Treating as leave without pay is not same as sanctioned or approved leave. Hon'ble Supreme Court was hearing bunch of appeals and examined the factual position in each case observing:-

"6. We have examined the factual position in each case. In CA No.9600 of 2003 the absence was 171 days between 1-11-1987 to 31-10-1988. In CA No. 9601 of 2003 the absence was 92 days between January 1991 to October 1991. In CA No.9608 of 2003 there was 105 days' absence between 1-1-1991 to 30-11-1991. In CA No.9607 of 2003 the absence was 294 days between 13-3-1991 and 1-1-1992. In CA No.9611 of 2003 the absence was 95 days between January 1987 to August 1987. In CA No.9602 of 2003 the absence was 137 days between 1-1-1993 to 30-11-1993. In CA No.9605 of 2003 the absence was 188 days between 1-1-1992 to 15-7-1992. Additionally, a similar absence was there in 1990, 1991 and 1998 for 81days, 129 days and 45 days respectively. In CA No.9613 of 2003 the absence was 166 days between January 1991 to December 1991. In CA No. 137 of 2004 the absence was 272 days between 1983 up to August 1985."

15. In none of these cases there was any distinctive charge as in the present case and, therefore, the learned Presiding Officer fell in error in

observing that the charge is defective in not specifying the period of leave and that due to absence of distinct charges the workman was prevented from tendering proper explanation.

16. Moreover, the respondent himself admitted that he was absent for a period of 133 days during the relevant year. The admission by the respondent is the best evidence against him as held in *Union of India & Ors vs. Chander Singh Manu/DE/1771/2002; Delhi Transport Corporation vs. Shyam Lal* (2004) 8 SCC 88; *Channabasappa Basappa Happali vs. State of Mysore* (1971) 1 SCC 1. Moreover, having regard to the provisions contained in Section 58 of the Evidence Act, a fact admitted need not be proved.

17. The workman relied upon a circular issued by the corporation. Para 2 of the circular states:

“in cases where leave applications have been rejected or no application is received from employee or for all intents and purposes the said employee can be treated as absent which is irregularity and tantamounts to misconduct for which we have every right to take disciplinary action. But in these cases, the chargesheet already framed will have to be amended.”

18. While observing that the circular goes against the interest of the workman for the management may treat such irregularity as misconduct yet it was observed that the charge was required to be amended. In *State of*

Haryana vs. Rattan Singh (1977) 2 SCC 491 Hon'ble Supreme Court has held that non-compliance of the departmental instructions is a rule of prudence and is not a rule that binds or vitiates for violation. This view was followed by a Single Judge of this Court in ***Jage Ram*** (supra) and ***Tarachand*** (supra). In view of the same, firstly there was no requirement for amendment of the charge. Even if as per departmental circular it requires amendment, the said instruction is merely a guiding factor and does not vitiates proceedings.

19. While issuing the chargesheet itself the respondent was informed that past conduct will be taken into consideration. It is not necessary that the past conduct should be of the same nature for which earlier the workman is punished. Overall assessment of the conduct of the workman is carried out to ascertain whether he should be retained in service or not. Under the circumstances, the Labour Court while observing that there was misconduct on the part of the workman in view of his continuous absence without leave yet went wrong in directing his reinstatement in the service.

20. Learned counsel for the respondent relied upon ***U.P.State Sugar Corporation and Vishvanathan*** (supra) regarding the scope of interference by this Court in exercise of jurisdiction under Article 226 of the Constitution however in this case itself it has been held that the jurisdiction of the High

Court under Article 226 of the Constitution is equitable and discretionary. The power under that article can be exercised by the High Court “to reach injustice wherever it is found”. On the other hand, counsel for the petitioner relied upon *L&T Komatsu Ltd. (supra)* which was also a case of unauthorised absence which was proved during the enquiry proceedings. The enquiry report was accepted by the management and the respondent was dismissed from service. The dismissal gave rise to an industrial dispute. The matter was referred to Labour Court. The Labour Court found that though the workman remained absent unauthorisedly the extreme punishment of removal from service was too harsh and disproportionate to the gravity of the charge and the order of dismissal was set aside and management was directed to reinstate the workman with continuity of service but without backwages. The single Judge upheld the order of reinstatement but without continuity of service and without backwages. The Division Bench allowed the appeal filed by the respondent while dismissing the appeal filed by the appellant. SLP was preferred and while dealing with the question whether habitual absenteeism is the gross violation of discipline the Court took note of what was stated in *Burn & Co. Ltd. vs Workmen AIR 1959 SC 529*.

“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 his 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."

21. While dealing with the powers under Section 11-A of the Act reliance was placed on number of judgments and it was held as under:-

"9. In *LIC of India v. R.Dhandapani*, it was held as follows

"It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A 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 11-A 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 11-A, 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 the 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 the 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 11-A 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 11-A 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 11-A 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.”

11. Again in [M.P. Electricity Board v. Jagdish Chandra Sharma](#) [2005 (3) SCC 401] this Court dealt with the matter as follows:

"The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the

unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under [Section 107-A](#) of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under [Article 226](#) of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In [U.P. SRTC v. Subhash Chandra Sharma](#) this Court, after referring to the scope of interference with punishment under [Section 11-A](#) of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In [Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh](#), this Court after referring to the decision in [State of Rajasthan v. B.K. Meena](#) also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave viz. is the establishment, interference with punishment of dismissal could not be justified. In [Bharat Forge Co. Ltd. v. Uttam Manohar Nakate](#) this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in [Mahindra and Mahindra Ltd. v. N.B. Narawade](#). This Court summed up the position thus: (SCC p. 141, para 20) "20 . It is no doubt true that after introduction of [Section 11-A](#) 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 11-A](#) 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."

It may also be noticed that in *Orissa Cement Ltd. v. Adikanda Sahu* and in [New Shorrock Mills v. Maheshbhai T. Rao](#) this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated "punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in [Muriadih Colliery BCC Ltd. v. Bihar Colliery Kamgar Union](#) this Court after referring to and quoting the relevant passages from [Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh](#) and [Tournamulla Estate v. Workmen](#) held: (SCC p. 336, para 17) "The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under [Section 11-A](#) of the Act to interfere with the punishment of dismissal."

22. On the factual matrix of the case it was found that the workman was guilty of unauthorised absence for a period of 105 days and as such, his consequential dismissal from service ought not to have been treated to be harsh and interfered with by Labour Court/High Court. The order of termination as passed by the authority is concerned was restored. Similar view was taken in *Hombe Gowda Educational Trust (supra)*.

23. When the factual background is considered in the light of principles indicated above, the inevitable conclusion is that even after holding that the workman was guilty of misconduct and remained unauthorisedly absent for a period of 133 days, the Presiding Officer was not justified in directing the

reinstatement by interfering with the order of termination. The award is accordingly set aside. The order of termination as passed by the authority concerned stands restored. The petition is allowed with no orders as to cost.

(SUNITA GUPTA)
JUDGE

AUGUST 14, 2015
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