

*** HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

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+ Writ Petition No. 4926 of 2010

% Dated 06.04.2016

B.S. Rao

...Petitioner

Vs.

**\$ Andhra Pradesh State Road Transport Corporation,
Rep. by its Depot Manager, Visakhapatnam,
Visakhapatnam District and another.**

...Respondents

! Counsel for the Petitioner: Sri P.V. Ramana

^ Counsel for the Respondent No.1: Sri S.V. Ramana

Counsel for the Respondent No.2: GP for Labour

< Gist :

> Head Note:

? Cases Referred:

1. 2006 (111) FLR 1187
2. 2006(1) ALD 512
3. 2000(2) LLN 402
4. 2000 LLN Page 11
5. 2005(3) SCC 134
6. 2005 LLR 1089 SC : (2005) 7 SCC 33
7. AIR 1958 SC 130
8. AIR 1973 SCC 1227(1)
9. (2010) 11 SCC 314
10. (2014) 10 SCC 301
11. (2014) 11 SCC 371
12. 1999(5) ALT 450

13. 2003(2) ALT 624(DB)
14. (2008) 1 SCC 115

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

-
Writ Petition No.4926 of 2010

Between:

B.S. Rao

-
And

.. Petitioner

Andhra Pradesh State Road Transport Corporation,
Rep. by its Depot Manager, Visakhapatnam,
Visakhapatnam District and another.

.. Respondents

DATE OF ORDER PRONOUNCED: 06.04.2016

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THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : YES
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? : YES

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.4926 of 2010

Order:

The petitioner was appointed as a driver in the first respondent-Corporation at Visakhapatnam in the year 1984. On 15.05.2007 the petitioner was asked to operate bus bearing registration No.AP-11Z-4858 from Visakhapatnam to Amalapuram, which was started late. He stopped the bus in Kakinada bus station at Platform No.8 instead of Platform No.5 in the hurry to allow the passengers to get down from the bus. The stopping of vehicle at Platform No.8 was noticed by the driver of bus bearing registration No.E-55131 of Kakinada depot, who is the driver of bus from Kakinada to Amalapuram. The said driver thought that by parking the vehicle at Platform No.8 by the Petitioner, the passengers will board his bus on wrong impression that it was going to Visakhapatnam and accordingly he made it an issue. Within few minutes, the depot staff and others gathered and the Traffic Inspector (TI)-III rushed to the bus of the petitioner with high voice and abused him in filthy language. He forced him to vacate the platform on the ground that it was not meant for Visakhapatnam – Amalapuram service. Even though the petitioner tried to explain the circumstances, the Traffic Inspector and other staff members forced him to move the bus from the said platform and switched off the headlights. At that time, one security guard informed him that the Depot Manager, Kakinada, called him to submit his explanation relating to altercation with Kakinada depot staff. He went to the Depot Manager and while returning, he was asked to sign on blank papers, which he refused to sign. However, at the instance of the Depot Manager, Kakinada, a complaint was lodged against him for taking action. On the said complaint, the Depot Manager of Visakhapatnam appointed one Assistant Manager (T) for conducting enquiry and based on his enquiry report, he was kept under suspension on 25.05.2007. A charge memo was issued containing three charges and he submitted his reply on 23.05.2007 and also followed by a final reply on 27.05.2007. Thereafter, a show cause notice was issued to him on 05.09.2007 proposing to impose major penalty of removal from

service. Ultimately, an order of removal from service was passed on 21.09.2007. Against the said order, he filed ID No.53 of 2008 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam, which dismissed the petition by an award dated 21.10.2009. Challenging the same, the present Writ Petition was filed.

2. No counter affidavit is filed by the first respondent.

3. Learned counsel for the petitioner submitted that the award of the Labour Court is perverse as it was not passed on proper grounds but by misconstruing several binding decisions. He further submitted that the Labour Court can go into the material produced before the Enquiry Officer and verify whether the finding recorded by the Enquiry Officer was correct or not. He further submitted that in view of nature of charges, the Labour Court should have considered the proportionality of the punishment.

4. Learned Standing Counsel for the first respondent-Corporation submitted that, since the Labour Court passed an order on 25.08.2009 with regard to validity of the domestic enquiry, it is not open to the petitioner to canvass the findings recorded by the Enquiry Officer and the Labour Court rightly disinclined to interfere with the punishment imposed on the petitioner in exercise of its power of discretion.

5. In the light of the above contentions, the following points would arise for consideration.

1. Whether the Labour Court is entitled to review the findings recorded by the Enquiry Officer on the basis of the material produced before it and can it decline to interfere with the findings when it comes to the conclusion that the procedure followed by the Enquiry Officer was found to be correct?

2. Whether the Labour Court has got power to examine the proportionality of punishment even if it comes to the conclusion that the domestic enquiry was valid?

6. Learned counsel for the petitioner filed additional set of material

papers in WPMP No.1802 of 2016 and they are allowed to be filed in the Court.

7. The charges framed against the petitioner read as follows.

“1. You have parked the vehicle of vehicle No.AP11Z 4858 of TIM services of 13.00 hrs VSP – AMP at an in-appropriate place at 1st instance at Platform No.8 and at 2nd instance at platform No.7 in the Kakinada Bus Station on 15.05.2007 at 19.00 hours and caused much inconvenience to other vehicles of Amalapuram-Kakinada Non-stop services of kakinada Depot at Platform No.8 and 19.15 hrs, KKD-HYD service at Platform No.7 this constitute misconduct vide clause No.xxxii of Regulation 28 of APSRTC Emp.(Conduct) Reg.1963.

2. You have misbehaved with the on duty TI-III/KKD Sri P.v. Rao with unparliamentary language as stated above with loud voice and entered into altercation, in spite of repeatedly requested by other staff to control yourself when he instructed to park your vehicle at the place allocated this constitute misconduct vide clause No.(viii) (xxi) of Reg.28 of APSRTC Emp.(Conduct) Reg.1963.

3. You have acted unruly behaviour in the Kakinada Bus Station with loud voice on the Traffic Inspector and RTC officials among the public, on 15.05.2007 from 19.10 hrs to 19.45 hrs which has tarnished the image of the Corporation which constitute misconduct vide clause No.(xxxi) of Reg.28 of APSRTC Emp.(Conduct) Reg.1963.”

8. The charges were framed pursuant to a complaint made on 16.05.2007 by the Traffic Inspector. A preliminary enquiry was conducted and a report was submitted on 23.05.2007. The petitioner was suspended from service on 25.05.2007 based on the preliminary enquiry report. Pursuant to the charge sheet issued, the petitioner submitted his explanation and an enquiry was conducted by the Enquiry Officer who was appointed for the said purpose. The Enquiry

Officer found that all the charges held proved, vide his report dated 17.07.2007. Based on the report, a show cause notice was issued on 28.07.2007 to which the petitioner submitted an explanation on 31.07.2007. Thereafter, a show cause notice for removal was issued on 05.09.2007 and the petitioner submitted his explanation on 10.09.2007. An order of termination from service was passed on 21.09.2007. Challenging the same, ID No.53 of 2008 was filed before the second respondent. The second respondent passed an order on 25.08.2009, on the preliminary objection raised by the workman about the validity of domestic enquiry procedure, holding that the domestic enquiry was valid. The relevant portion of the order of the Labour Court dated 25-8-2009 reads as follows.

“The contention of the workman is that there is no proper evidence to prove the allegations and that the allegations made in the charges are not substantiated and that the enquiry officer had not applied his mind to the evidence on record and the disciplinary authority also acted upon the enquiry report mechanically. All these questions do not pertain to the preliminary objection as to the validity of domestic enquiry and they are required to be considered in the enquiry under Section 11A. The validity of domestic enquiry should be examined on the touch stone of observance of principles of natural justice. A perusal of the proceedings would disclose that the petitioner participated in the enquiry before the enquiry officer, he was given reasonable opportunity to put forth his defence and he was served with the enquiry officer’s report and remarks are called for and then only the impugned punishment was imposed against him. Therefore, the petitioner’s contention that the domestic enquiry procedure is invalid, is unsustainable as per record. Hence, the objections are overruled. The matter is posted for enquiry under Sec.11A, to 16.09.2009.”

9. Thereafter the Labour Court framed the following issues for consideration:

“1. Whether the workman is not guilty of the misconduct as alleged
in the charge?

2. Whether the punishment is disproportionate?

3. To what relief?”

10. It was observed by the Labour Court that when it once held that the domestic enquiry was legal, it is not open to the Court to analyze the evidence afresh and come to a different conclusion regarding the finding of fact based on **M/s. Tata Engineering and Locomotive Co., Limited v. N.K. Singh**^[1]. It also observed that there is sufficient evidence and material on record to accept the contention of the management that the petitioner is guilty of the misconduct attributed to him under the charges. Accordingly, it held point No.1 against the petitioner. Regarding point No.2 framed by it, the Labour Court held that the punishment of removal from service is shockingly not disproportionate based on the decisions reported in **FGP Limited, Bombay v. Presiding Officer, Labour Court-III, Hyderabad**^[2], **Uttaranchal State Road Transport Corporation v. Subbash Sarma**^[3], **UPSRTC v. Mohan Lal Gupta**^[4], **Mahindra and Mahindra v. N.B. Narawade**^[5], and **V. Ramana v. APSRTC and others**^[6].

11. In the light of the above undisputed facts, the points framed above by this Court have to be considered.

12. Section 11-A of the Industrial Disputes Act, 1947 (for short ‘the Act’) reads as follows.

“11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by

its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

13. Section 11-A was incorporated in the Act by Section 3 of the Industrial Disputes (Amendment) Act 1971. It came into force with effect from 15.12.1971. As could be seen from the statement of Objects and Reasons, the amended section was introduced, in order to remedy the observations made by the Supreme Court in **Indian Iron and Steel Company Limited v. Their Workmen**^[7]. It will be useful to reproduce the statement of Objects for better appreciation:

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

The International Labour Organisation, in its recommendation (No.119) concerning termination of employment at the initiative of the employer adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled, to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case, and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be

empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new [section 11A](#) is proposed to be inserted in the [Industrial Disputes Act, 1947](#).....”

14. Hence in the light of the above amended Section 11-A of the Act, the Tribunal has power in appropriate cases to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions as it thinks fit or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal.

15. But, it appears that a practise has developed before the Labour Courts by filing memos to the effect that they are not disputing the proceedings before the Enquiry Officer or that they are not disputing the enquiry report. Probably that was intended to shorten the litigation and concentrate on the quantum of punishment. The Labour Courts have been considering such memos and passing orders at the preliminary stage, as was done in the present case on 25.08.2009. But, curiously in the said order, it was stated that the questions raised by the petitioner do not pertain to the preliminary objection as to the validity of the domestic enquiry and they were required to be considered in the enquiry under Section 11-A. In fact, it was not properly considered.

16. The power of the Labour Court consequent to the amended

section

11-A of the Act was considered by the Hon'ble Supreme Court in **The Workmen of M/s. Firestone Tyre and Rubber Company of India P.Ltd., v. The Management and others**^[8]. The observations of the Hon'ble Supreme Court are as follows.

“We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under section 11-A 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 accented 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.”

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17. While answering the contentions advanced by the management, the Hon’ble Supreme Court considered the proviso to said section which provides for considering the material which the expression “material on record” occurring in the said proviso means. The Hon’ble Supreme Court also held that the employer can adduce the evidence for the first time even though in case no evidence is adduced before passing an order of dismissal or discharge in an application made by an employer under Section 33(1) for permission or Section 33(2) for approval.

18. In **V. Ramana’s** case (supra) relied on by the Tribunal, the Hon’ble Supreme Court upheld the order of this Court rendered by a Full Bench holding that the acquittal in a criminal case is of no consequence and the amount involved in the discrepancy was also equally inconsequential in examining the quantum of punishment. The Hon’ble Supreme Court examined the scope of interference in quantum of punishment. Ultimately it observed as follows:

“The common thread running through in all these decisions is that the court should not interfere with the administrator’s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case (1948) 1 KB 223) the Court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the

conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”

19. In **Charanjit Lamba v. Commanding Officer, Army Southern Command and others**^[9], the Hon’ble Supreme Court examined the scope of judicial review and the parameters that have to be worked out in interfering with the punishment. The observations are as follows.

“We may refer to the decision of this Court in M.P. Gangadharan & Anr. v. State of Kerala & Ors. (2006) 6 SCC 162, where this Court declared that the question of reasonableness and fairness on the part of the statutory shall have to be considered in the context of the factual matrix obtaining in each case and that it cannot be put in a straitjacket formula. The following passage is in this regard apposite:

"34. The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a straitjacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review. We are not unmindful of the development of the law that from the doctrine of *Wednesbury* unreasonableness, the court is leaning towards the doctrine of proportionality....."

That the punishment imposed upon a delinquent should commensurate to the nature and generally of the misconduct is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even those form quality of a misdemeanour are entitled to claim but the same is recognized as being a part of Article 14 of the Constitution. It is also evident from the long time of decisions referred to above that the courts in India have recognized the doctrine of proportionality as one of the ground for judicial review. Having said that we need to remember that the quantum of punishment in disciplinary

matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith.

What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee the Writ Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step in to interfere with the same.”

20. The scope of enquiry under Section 11-A of the Act and the interference with the punishment by applying the doctrine of proportionality came up for consideration before the Hon’ble Supreme Court in **Raghubir Singh v. General Manager, Haryana Roadways, Hissar**^[10]. The appellant before the Hon’ble Supreme Court, who was working as a Conductor, was terminated from service for alleged misappropriation of amount collected from tickets. The Labour Court passed an award declaring the termination of the appellant from service was illegal and ordered reinstatement with 60% back wages. The same was challenged before the High Court of Punjab and Haryana by the Haryana Roadways and the award was set aside and remanded the case to the Labour Court for fresh adjudication. On remand, the award was passed against the appellant on the ground that the reference of ID was time barred. The same was challenged by the appellant before the High Court which was dismissed by the learned single Judge as well as by the Division Bench. The matter was carried to the Hon’ble Supreme Court. It was contended before the Supreme Court that the order of termination was passed without conducting an enquiry and the reasons given for dispensing with the enquiry were not proper. The Hon’ble Supreme Court, after referring to

Firestone Tyre and Rubber Company's case (supra) held that the Labour Court and the High Court failed to adjudicate the dispute referred to it on merits which led to gross miscarriage of justice. It also held that on the application of the doctrine of proportionality, the order of termination, even if it is justified, is disproportionate to the gravity of misconduct.

21. In **JH Patel (Dead) by LRs v. Nuboard Manufacturing Company Limited**^[11], the Hon'ble Supreme Court considered the case of a dismissed workman and made the following observations:

“.....The management chose to proceed departmentally against the workmen after the acquittal of its officers in the criminal court. It did not afford any opportunity to the workmen at the departmental level. Afterwards, when the dispute was taken to the Labour Court, it was the responsibility of the management to prove the misconduct in court, and that ought to be done by leading evidence of the witnesses which, of course, they did. However, the evidence has to be discussed by the Labour Court. In the present case, there is no discussion whatsoever about the evidence as to why the Labour Court came to the conclusion that the misconduct is established. In the circumstances, the findings of the Labour Court cannot be sustained that the management had proved the misconduct. Inasmuch as the misconduct was not proved, the workmen were entitled to get the relief that they were seeking, namely, the declaration that the termination of their services was bad in law and then the consequential relief. When the matter was carried to the High Court, the High Court also lost sight of that fact and, on the other hand, it deleted whatever compensation was awarded to the workmen by the Labour Court. In our view, the order of the High Court is erroneous on the very ground.”

22. In **Mahindra and Mahindra Ltd.'s** case (supra) relied on by the Labour Court, a three Judge Bench of the Hon'ble Supreme Court examined the scope of enquiry under Section 11-A of the Act. The Hon'ble Supreme Court was examining the case of a Fitter in the Chassis Assembly Department of the appellant industry. It was alleged that on 07.11.1991 the workman used filthy language against

his superior and after finding him guilty of the charges, his services were terminated by the disciplinary authority on 05.03.1991. When the Labour Court passed an award holding that the dismissal from service was harsh and improper and directed reinstatement, the appellant challenged the said award. It was dismissed by the learned single Judge and confirmed by the Division Bench holding that the punishment was disproportionate to the misconduct. In that context the Hon'ble Supreme Court made the following observations and allowed the appeal:

“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 concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above 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 requires 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 can not by way of sympathy alone exercise the power under [Section 11-A](#) of the Act and reduce the punishment. As noticed herein above at least in two of the cases cited before us, i.e. Orissa Cement Ltd. (1960) 1 LLJ 518 (SC) and New Shorrock Mills (1996) 6 SCC 590 : 1996 SCC (L&S) 1484, 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 civilized 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 herein above.

Learned counsel for the respondent contended that there was sufficient provocation for the use of such words because the workman was asked to do certain work which was impossible to be done by any person without causing harm to himself, but this is not the defence that was taken in the enquiry or before the Labour Court and is being argued for the first time before this Court. On the contrary, the sole defence of the workman was that he did not remember abusing the engineer concerned.

We may also note here that the learned counsel for the appellant has pointed out from the records that the workman was charge-sheeted more than once on earlier occasions and in spite of the gravity of the offence he was dealt with leniently. He pointed out that in one such earlier instance this workman had assaulted his co-worker with a galvanized pipe causing grievous injury, even then he was punished with 4 days suspension only which according to the learned counsel clearly shows that the Management-appellant is not being vindictive.

Taking into consideration the over all fact situation and the law laid down by this court and in spite of the fact that three courts have concurrently come to the conclusion that the punishment of dismissal would be disproportionate to the misconduct, we will have to disagree with those findings.”

23. A learned single Judge of this Court in **Divisional Manager, APSRTC v. E. Raja Reddy**^[12], considered the procedure as followed in the instant case and it was held as follows:

“The first respondent-workman filed a Memo before the Labour Court, at the threshold stage expressing his no objection for the validity of the domestic enquiry and accordingly requested the Labour Court to proceed to decide the matter under Section 11-A of the Act. There was no request whatsoever by the petitioner to lead any further evidence in support of its order removing the first respondent from service. The Labour Court therefore, proceeded to consider the material on record and arrived at its own conclusions. The order does not suffer from any infirmity whatsoever requiring any interference by this Court. The Labour Court is entitled to re-appreciate the evidence and substitute its own finding for that of the disciplinary authority. Such a re-appreciation of the evidence and the material on

record is permissible even in cases where the Labour Court is required to consider the matter in exercise of its power under [Section 11-A](#) of the Act. The Labour Court is entitled to go into the whole question afresh even in cases where there is an admission as to the validity of the domestic enquiry. The domestic inquiry may have been held in accordance with the principles of natural justice, but that does not mean that the workman cannot raise any dispute with regard to the findings arrived at by the disciplinary authority.

The issue raised for consideration in the instant writ petition is not *res Integra*, but conclusively decided by an authoritative pronouncement of the Supreme Court in *Fire Stone* case (*supra*), which is as under:

“Therefore, it will be seen that, both in respect of cases where a 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 11-A](#), 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.”

24. The Division Bench of this Court in **MV Seshachary v. The Chairman and Managing Director, Madras Fertilizers Limited, Manali, Chennai (Writ Appeal Nos.405 and 409 of 2013, dated 04.07.2014)** examined the scope of Section 11-A and after reviewing the case law it was held that it was not incompetent to the Labour Court to disagree with the finding recorded in the domestic enquiry, but each case would depend upon the facts existing. In the context of re-appreciating the material in the enquiry if the findings arrived at by the Enquiry Officer are well founded they cannot be disturbed by the Labour Court out of sympathy on the workman.

25. Learned Counsel for the first respondent-Corporation relied on a Division Bench decision of this Court reported in **APSRTC, rep. by its Depot Manager, Palasa Depot, Srikakulam District v. Mudidina Krishna Moorthy and another**^[13], and contended that the judicial

review of disciplinary action is very much limited under Section 11-A of the Act. He submitted that the jurisdiction of the High Court to interfere with the discretionary power exercised by the Industrial Court is very limited, unless it is fanciful and arbitrary. But, that was a case of a Conductor who was working in a casual leave vacancy removed from service after conducting enquiry. The facts of that case are not applicable to the present case.

26. In **UPSRTC v. Vinod Kumar**^[14], the Hon'ble Supreme Court considered the case of the respondent-workman who challenged his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment without challenging the correctness, legality or validity of the enquiry conducted. It was held that it was not open to the Labour Court to go into the findings recorded by the Enquiry Officer regarding misconduct committed by the respondent. But, in this case when the petitioner raised objections to the procedure followed in the enquiry and findings recorded by the Enquiry Officer, the Labour Court held that the same would be considered at the time of main enquiry in the case. Hence, the decisions cited by the learned counsel for the first respondent are not applicable to the facts of this case.

27. In the light of the authoritative decisions of the Hon'ble Supreme Court, this Court is of the opinion that the approach made by the Labour Court in declining to examine the objections raised by the petitioner to the procedure followed in the enquiry, its findings and also to the quantum of punishment imposed is not proper. This Court feels that the entire matter has to be reconsidered by the Labour Court in the light of the authoritative pronouncements and keeping in view this order. This Court purposely did not discuss the procedure followed during the process of enquiry, the tenability of the findings and also the quantum of punishment which issues are directed to be considered by

the Labour Court now.

28. In the circumstances, the Writ Petition is allowed, the impugned award dated 21.10.2009 passed in ID No.53 of 2008 is set aside and the matter is remitted to the Labour Court for consideration of the case afresh and pass a fresh award after hearing the parties on the basis of the record available with it, in accordance with law, within a period of six (6) months from the date of receipt of a copy of this order. However, in the circumstances, no costs.

29. As a sequel thereto, the miscellaneous petitions, if any pending in this Writ Petition, shall stand closed.

A.

RAMALINGESWARA RAO, J

Date: 06th April, 2016

Nsr

[\[1\]](#) 2006 (111) FLR 1187

[\[2\]](#) 2006(1) ALD 512

[\[3\]](#) 2000(2) LLN 402

[\[4\]](#) 2000 LLN Page 11

[\[5\]](#) 2005(3) SCC 134

[\[6\]](#) 2005 LLR 1089 SC : (2005) 7 SCC 338

[\[7\]](#) AIR 1958 SC 130

[\[8\]](#) AIR 1973 SCC 1227(1)

[\[9\]](#) (2010) 11 SCC 314

[\[10\]](#) (2014) 10 SCC 301

[\[11\]](#) (2014) 11 SCC 371

[\[12\]](#) 1999(5) ALT 450

[\[13\]](#) 2003(2) ALT 624(DB)

[\[14\]](#) (2008) 1 SCC 115