

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

WRIT PETITION No.22782 OF 2014

Between:

G.C. Bheemaiah, S/o. Late Balaiah,
Aged 40 years, Ex-Driver, E.No.150886,
R/o.Vadyala, Kalwakurthy Mandal,
Mahabubnagar District.

--- Petitioner.

And

APSRTC, Rep. by its Managing Director,
Bus Bhavan, Musheerabad, Hyderabad
and another.

--- Respondents.

Date of Judgment Pronounced : 29.04.2016

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SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers

May be allowed to see the judgment? Yes

2. Whether the copy of judgment may

be marked to Law Reporters/Journals? Yes

3. Whether Their Lordship wish to see the

Fair copy of the judgment? Yes

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***THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

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+ WRIT PETITION No.22782 OF 2014

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%Dated: 29-04-2016

G.C. BHee,aoaj, S/o. Late Balaiah,
Aged 40 years, Ex-Driver, E.No.150886,

R/o.Vadyala, Kalwakurthy Mandal,
Mahabubnagar District.

..... **Petitioner.**

VERSUS

\$ APSRTC, Rep. by its Managing Director,
Bus Bhavan, Musheerabad, Hyderabad
and another

.... **Respondents.**

! Counsel for Petitioner : Sri V. Narasimha Goud.

^ Counsel for Respondents. : Sri B. Mayur Reddy.

< GIST :

> HEAD NOTE :

? Cases referred :

1. 1994 Supp (3) SCC 755
2. MANU/AP/0073/2016
3. AIR 1958 SC 398
4. 1955 1 SCR 1104
5. AIR 1959 SC 725
6. 2015 (2) ALD 41
7. JT 2003 (2) SC 295
8. AIR 2010 SC 75
9. 1997 (7) SCC 463
10. 1997 (3) SCC 72
11. 2007 (4) SCC 669
12. W.A. No.1126/2009 (APHC)

THIS COURT MADE THE FOLLOWING:

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.22782 OF 2014

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949 is filed by the petitioner, to issue a writ of *certiorari* and quash the proceedings of removal from service, issued by the 2nd respondent bearing No.P2/1(82)/2013-KLKY, dated 05.06.2014, declare the same as unjust, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and direct the respondents to reinstate the petitioner into service with all consequential benefits.

The case of the petitioner, in brief, is that he joined in the service of the respondents-corporation as driver in the year 1999 and his services were regularized with effect from 01.08.2000. Since then, he was discharging his duties to the best of his ability, till his removal from service *i.e.*, by order dated 05.06.2014. It is the specific case of the petitioner that he was removed from service for his absence from 17.07.2013 to 01.08.2013, after following the procedure prescribed under the A.P.S.R.T.C. Employees (Conduct) Regulations, 1963 (for short, 'the Regulations'), but without serving the charge memo and the enquiry report dated 03.04.2014 but called for objections on the said enquiry report straight away issued show-cause notice proposing to impose penalty of removal from service, which procedure is illegal and irrational.

It is further contended that the punishment imposed against the petitioner is disproportionate to the gravity or seriousness of the charge framed against him and, in such case, the impugned proceedings dated 05.06.2014 are liable to be set-aside and, hence, prayed to declare the impugned proceedings dated 05.06.2014 as arbitrary, unjust, illegal and violative of principles of natural justice.

The respondents did not file any counter.

During course of hearing, Sri V. Narasimha Goud, learned counsel for the petitioner, would contend that the absence of the petitioner was not intentional but it was only due to a cause beyond his reasonable control; therefore, the petitioner was prevented by sufficient cause from attending duty for the said period. It is further contended that the procedure followed by the respondents to pass the impugned order is against the rules, removing the petitioner from service by issuing show-cause notice without serving the copy of the enquiry report is unjust and illegal. The regulations and principles of natural justice require service of such enquiry report, while calling for explanation or comments of the employee before imposing any penalty, but in violation of the regulations and principles of natural justice, penalty of removal was imposed by passing the impugned order.

It is further contended that the respondents considered the alleged subsequent absence from duty and passed the impugned order, considering the absence of the petitioner for the subsequent period without initiating any separate enquiry since it was not a part of the earlier charge; apart from that, the penalty of removal from service for the absenteeism of the petitioner for 15 days is harsh, unjust and disproportionate to the gravity or seriousness of the misconduct, attributed to the petitioner and prayed to set-aside the same, placing reliance on the decision of the Apex Court in ***Union of India and others Vs. Giriraj Sharma***^[1] and a decision of this Court in ***Telangana State Road Transport Corporation and others Vs. Janaki Ramudu***^[2].

Per contra, Sri B. Mayur Reddy, learned standing counsel appearing for the respondents-corporation, would contend that when

an employee of the corporation intentionally absents to duty without any cause, the punishment to be imposed against such an employee is removal under Regulation 9 of the Regulations. Therefore, removal of the petitioner from service for his wilful absence for a period of 15 days is in accordance with law. He further denied that non-service of copy of the enquiry report on the petitioner is not in violation of any of the principles of natural justice, since gist of the report was already communicated to him and contended that punishment for absenteeism without sufficient cause is the only punishment prescribed under Regulation 9 is removal. Finally, it is contended that even after initiating the disciplinary proceedings under the Regulations, the petitioner did not attend the work wilfully; in such case, his subsequent conduct can also be taken into consideration to impose penalty. Therefore, the order does not suffer from any illegality, warranting interference of this Court since the jurisdiction of this Court under Article 226 is limited and prayed to dismiss the writ petition.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are:

- 1) Whether the petitioner was absent to duty for the period from 17.07.2013 to 01.08.2013, without any sufficient cause?
- 2) Whether the penalty of removal from service in the set of facts narrated above is proportionate to the gravity or seriousness of the misconduct? If not, whether the same is liable to be set-aside, exercising power of judicial review under Article 226 of the constitution of India?

POINT No.1: Undisputedly, the petitioner did not attend duty for the period from 17.07.2013 to 01.08.2013; the reason assigned by the petitioner for his absence was that he suffered from severe back pain, not able to discharge his duties, and, in those circumstances, he

underwent treatment for his back pain; thus, there is a justifiable or sufficient cause for his absence. It is the case of the petitioner that he submitted sick certificate issued by the local dispensary of 2nd respondent at Mahabubnagar and attended duty after recovering from his illness but he was not allowed to discharge his duties by the 2nd respondent directing him to give a statement before the Deputy Superintendent Traffic of the 2nd respondent; accordingly, he gave statement explaining the circumstances which made him to absent to duty for the said period. The Enquiry Officer did not consider his sick certificate submitted to the traffic official on duty at the controllers chart *i.e.*, controller and TI-II though he explained that he was suffering from severe back pain and unable to discharge his duties as a driver. Therefore, he was prevented by sufficient cause which is beyond his reasonable control within the meaning of regulation 28 (XXVIII) of the Regulations. The 2nd respondent, dissatisfied with the explanation, initiated enquiry against the petitioner, called for an explanation and the petitioner submitted his sick certificate to TI-II of the 2nd respondent. The enquiry report disclosed that the petitioner was absent without obtaining prior sanction of leave from the authorities concerned and no sick certificate from A.P.S.R.T.C. hospital was submitted and his conduct resulted in dislocation of services and caused inconvenience to the general public and thereby caused loss to the corporation. Undisputedly, the petitioner did not obtain prior sanction of leave or intimated his absence to the concerned authorities but the enquiry officer concluded that the petitioner had no interest to work in the respondents-corporation. Therefore, he is found to be unprofitable employee to the respondents-corporation.

The report also further discloses that the petitioner did not produce the treatment particulars where he underwent treatment, without reporting to duty, and, even otherwise, he is under obligation to undergo treatment at Tarnaka hospital or dispensary at Mahabubnagar

for better treatment but the petitioner did not undergo treatment either in Tarnaka hospital or any other dispensary of the 2nd respondent at Mahabubnagar. Therefore, the treatment he allegedly underwent in the Government Hospital AT Mahabubnagar was not accepted and found the petitioner guilty.

Suffering from severe back pain by any ordinary prudent driver, would disable him to drive the vehicle with concentration. The petitioner was treated in a Government hospital and produced sick certificate before the TI-II while he was working at Kalwakurthy depot as driver. Failure to get himself treated at Tarnaka hospital or any other hospital of the respondents-corporation, when he was suffering from such severe back pain, is not a ground to disbelieve sickness of the petitioner; that apart, failure to get himself treated in the dispensary at Mahabubnagar which is away to his place of residence or working is not a ground to disbelieve sickness. Moreover, the petitioner who was suffering from such severe back pain is supposed to get treatment locally to avoid further journey and suffer from back pain. Therefore, sick certificate issued by the local area Government hospital can be accepted unless such certificate is doubted but, it is not the case of the respondents that the petitioner did not furnish any sick certificate issued by the dispensary of 2nd respondent at Mahabubnagar or Government hospital and only for the reason that he was not got treated in Tarnaka hospital at Hyderabad or in the dispensary of 2nd respondent at Mahabubnagar, the sick certificate was disbelieved. When the petitioner was suffering from such severe back pain, the petitioner might not be in a position to undergo journey from Kalwakurthy to Tarnaka Dispensary at Hyderabad for treatment. In ordinary course of events, similarly, in the dispensary at Mahabubnagar, the enquiry officer did not record any reason for disbelieving the sick certificate issued by the Government Hospital or dispensary of 2nd respondent at Mahabubnagar submitted by the

petitioner to the TI-II, Kalwakurthy Depot. Therefore, when the petitioner submitted his sick certificate after getting himself treated in the Government hospital for his severe back pain, which disabled him to drive the vehicle with sufficient concentration, can be said to be sufficient cause.

In those circumstances, at best, the duty of the enquiry officer is to doubt whether the cause shown by the petitioner is sufficient cause or not and expected to record a finding.

The word 'sufficient cause' means a cause which was beyond the control of the petitioner and to decide whether a cause shown by the petitioner is sufficient cause or not, the authorities have to take into consideration the attending circumstances but, in the present case, 2nd respondent did not examine the attending circumstances, including the sick certificate furnished by the petitioner before TI-II of the 2nd respondent; without giving any reason to reject the sick certificate found the petitioner guilty for his absence. In the absence of recording any finding that the petitioner was not prevented by a sufficient cause from attending to duty, the report of the enquiry officer appointed by the 2nd respondent is not sustainable since Regulation 9 says that when an employee of the corporation absented from duty without any **"sufficient cause"**, punishment of removal can be imposed. The word 'sufficient cause' assumes importance and the enquiry officer if found that the absence of the petitioner from duty for the period from 17.07.2013 to 01.08.2013 is without any sufficient cause, recording a specific finding thereon penalty, prescribed under Regulations, can be imposed but the report is bereft of any such finding. On the other hand, the petitioner produced sick certificate issued by the Government hospital and he underwent treatment for his severe back pain which disabled him to discharge his duties effectively as a driver. Therefore, the cause shown by the petitioner is sufficient cause and, in such case,

the petitioner cannot be found fault for his absence since it is not intentional or wanton; consequently, penalty imposed against the petitioner can be set-aside on this ground alone. Hence, I find that the petitioner was prevented by sufficient cause from attending his duties for the period from 17.07.2013 to 01.08.2013 and not liable for punishment under Regulation 9. Accordingly, the point is answered.

POINT No.2: the main grievance of learned counsel for the petitioner is that no enquiry report was served on him while calling for objections or comments or written submissions as per the Regulations. However, the petitioner submitted his explanation dated 07.04.2014 specifically asserting that the charge sheet was not served on him and requested to serve a copy of the charge sheet. In fact, it is not the case of the petitioner that the charge sheet was not served upon him at the earliest point of time. However, the impugned order dated 05.06.2014 discloses that a show-cause notice for removal from service of the respondents-corporation was served on the petitioner on 04.04.2014 and he submitted his explanation but it is silent regarding service of charge sheet or charge memo but it is not the appropriate stage to contend that no charge sheet was served on the petitioner. Leave alone about the regularity in the enquiry proceedings, penalty imposed against the petitioner i.e., removal from service is main issue before this Court. Therefore, I would like to decide the legality of the punishment with reference to settled principles of law. Before going into the legality of the punishment, I would like to advert to scope of interference under Article 226 of the Constitution of India in such an administrative matter. Normally, the courts would not interfere while exercising the power of judicial review in the penalty proceedings imposed by the departmental or administrative authorities unless it is perverse.

In ***Nagendranath Bora and another Vs. the Commissioner of Hills Division and Appeals, Assam and others***^[3], the Apex Court

held that the nature of the error which can be said to be an error apparent on the face of the record which would be one of the grounds to attract the supervisory jurisdiction of the High Court under Article [226](#) of the Constitution. The ancient writ of *certiorari* which now in England is known as the order of *certiorari*, could be issued on very limited grounds. These grounds have been discussed by this Court in the cases of *Parry and Company Vs. Commercial Employee's Association, Madras* {(1952) ILLJ 769 SC}, *Veerappa Pillai Vs. Raman and Raman Limited and others* {[1952] 1 SCR 583}, *Ibrahim Aboobakar Vs. Custodian General of Evacuee Property* {[1952] 1 SCR 696} and *T.C. Basappa Vs. T. Nagappa* { [1955] 1 SCR 250} .

All these cases have been considered by the Apex Court in the case of *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and others*^[4] and concluded that the Court while issuing writ of *certiorari* acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous.

While considering the fourth proposition whether the writ can be issued in the case of a decision which was erroneous in law, after considering the recent Authorities, the Apex Court held that the powers of judicial interference under Article [227](#) of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article [226](#) of the Constitution. Under Article [226](#), the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article [227](#) of the Constitution, the power of interference is limited to see that the Tribunal functions within the limits of its authority.

In view of the principles laid down in the above decisions, the law declared by the Apex Court in the decisions referred supra, the

scope of judicial interference in the penalty imposed in departmental enquiry is limited and if the Court finds that the findings are perverse or the punishment is shockingly disproportionate to the gravity of the misconduct, the Court can interfere with such proceedings.

In a recent Division Bench decision of this Court in ***Janaki Ramudu***², an identical question came up before the Division Bench of this Court but the period of absence was only 5 days therein. This Court, while adverting to Regulation 9 relying on the decision of the Apex Court in ***Om Kumar and others Vs. Union of India***^[5], held as follows:

“24. We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article [226](#) of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as Wednesbury principles, (See *Associated Provincial Picture Houses Vs. Wednesbury Corporation* [(1948) 1 KB 223]). This Court had occasion to lay down the narrow scope of the jurisdiction in several cases. The applicability of the principle of proportionality in administrative law was considered exhaustively in *Union of India Vs. 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.

28. By proportionality, we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.”

Thus, from the principle laid down by the Apex Court in ***Om Kumar***⁵, followed by the Division Bench decision of this Court, limited interference of this Court is permissible when the administrative authority did not exercise its discretion to the disproportionate penalty imposed. This Court further observed in Para 17 therein that for the sheer failure on the part of the Depot Manager, Kalwakurthy in not applying as to whether the punishment of removal from service would meet the facts and circumstances brought on record, the punishment imposed on both the writ petitioners is bound to be set at naught.

Thus, from the principle laid down by this Court in ***Janaki Ramudu***², when the punishment imposed by the administrative authorities is shockingly disproportionate, judicial interference is permissible. In similar circumstances, the Division Bench of this Court in ***Chand Pasha Vs. A.P.S.R.T.C.***^[6], when a conductor was removed from service for his absence from duty for 11 days, despite submission of explanation having found not satisfactory imposed penalty of removal from service under Regulation 9, observed as follows in Para 11:

“11. Now comes the question as to whether the appellant must be reinstated into service without any conditions. The charge of unauthorized absence was framed against him. It is not difficult to imagine the inconvenience to the Corporation as well as the travelling public, on account of unauthorized absence of conductors. Many a time the services have to be cancelled or recalled. That would not only result in loss of revenue to the Corporation but also a serious hardship to the travelling public. We are of the view that ends of justice would be met, if the appellant is directed to be reinstated by denying him the benefit of back wages as well as any continuity of service for the period between the date of removal and the date of reinstatement, except for the limited purpose of determining the retirement benefits.”

Though no law is declared by this Court hereinabove, the facts of the case are almost identical to the present facts of the case.

The main endeavour of learned counsel for the petitioner is that the action of the respondents is irrational and the penalty of removal imposed against the petitioner is shockingly disproportionate since the petitioner explained the reason for his absence *i.e.*, a reason beyond his reasonable control having suffered severe back pain, which prevented from discharging his duty as a driver; thereby, the petitioner made out sufficient cause which prevented him from attending duties as a driver. In such case, the respondents would have taken into consideration the sick certificate produced by the petitioner from the Government Dispensary, Mahabubnagar or issued by dispensary of 2nd respondent at Mahabubnagar, but without recording any reason imposed penalty and such penalty of removal is totally perverse. When the acts of the respondents are un-reasonable, the Court can interfere by applying the principle of *Wednesbury* test.

In ***Indian Railway Construction Company Limited Vs. Ajay Kumar***^[7], the Apex Court discussed about the scope of *Wednesbury* principle and held as follows in Para 8:

8. The famous case commonly known as "The *Wednesbury's* case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in *Associated Provincial Picture Houses Vs. Wednesbury Corporation* ([1948] 1 KB 223) at page 229, which reads as follows:

".....It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention

to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers the authority..... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community; Lord Diplock observed in that a case as follows:

".....Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

Lord Diplock explained "irrationality" as follows:

By 'irrationality' I mean what can by now be succinctly referred to as Wednesbury unreasonableness." It applies to a decision which is to outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

In other words, to characterize a decision of the

administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

These principles have been noted in aforesaid terms in [Union of India and Another Vs. G. Ganayutham](#), ([1997] 7 SCC 463). In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself.

Neither learned Single Judge nor the Division Bench has examined the question as to practicability or otherwise of holding the enquiry in the correct perspective. They have proceeded on the footing as if the order was mala fide; even when there was no specific allegation of mala fides and without any specific person against whom mala fides were alleged being impleaded in the proceedings. Except making a bald statement regarding alleged victimization and mala fides no specific details were given."

Thus, from the principles laid down by the Apex Court, in the decisions referred supra, the test to determine the administrative order is reasonableness. The Apex Court in ***Chairman-cum-Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhuri and others***^[8], while extracting the principles laid down in ***Union of India Vs. G. Ganayutham***^[9], and other decisions, after reviewing other decisions, laid down the principles to be followed while exercising power of judicial review in administrative order and they are as follows:

"(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the

Wednesbury test.

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

(3)(a) As per *Bugdaycay* 1987 AC 514, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the *primary judgment* in the manner he has done.

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

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on *Wednesbury* and *CCSU* principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

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

In view of the principles laid down by the Apex Court in ***Ganayutham*⁹**, the Court has to decide whether the order passed by the administrator is irrational and when there is no finding that the decision is one which no sensible person who weighed the pros and

cons could have arrived at nor is there a finding, based on material, that the punishment is in “outrageous” defiance of logic. Neither Wednesbury nor CCSU tests are satisfied.

In ***Indian Oil Corporation Limited Vs. Ashok Kumar Arora***^[10], the Apex Court reiterated the same principle and held as follows:

“..... that the Court would not intervene unless the punishment is wholly disproportionate.

In such a situation, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C. Chaturvedi case that the Court might to shorten litigation think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority.

In ***Coimbatore District Central Co-operative Bank Vs. Coimbatore District Central Co-operative Bank Employees Association and another***^[11], the Apex Court held that there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “***doctrine of proportionality***”. Thus, the “***proportionality***” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered

his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance of the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise-the elaboration of a rule of permissible priorities.

In Halsbury's Laws of England, Reissue, Volume 1(1), pages 144 and 145, Para 78, it was stated as follows:

"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."

In ***Mukul Kumar Choudhuri***⁸, the Apex Court further held as follows in Para 21:

"21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".

Thus, from the principles laid down in the decisions referred supra, it is clear that the administrative authorities have to act in all fairness and impose penalty proportionate to the gravity of misconduct without abusing any discretion conferred on them.

In ***Mukul Kumar Choudhuri***⁸, the Apex Court finally concluded

as follows in Para 21:

“26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.”

In view of the law declared by the Apex Court in the decisions referred supra, it is clear that the administrative authorities have to act in all fairness against their employees and impose appropriate or suitable penalty, in the event the employees are found guilty of misconduct in discharging their duties but it must commensurate with the gravity or seriousness of the misconduct. If the administrative

orders are motivated or against the law, this Court can interfere while exercising power under Article 226 of the Constitution of India.

In the facts of the present case, the petitioner-driver while working under the respondents-corporation did not attend duty for a period of 15 days but did not involve in any serious financial irregularity warranting his dismissal. Though Regulation 9 permits the respondents-corporation to remove or dismiss the employee from service when he is guilty of absenteeism without any sufficient cause, the cause shown by the petitioner is that he was suffering from severe back pain, underwent treatment, produced certificate from Government Dispensary, Mahabubnagar but the respondents did not record any finding disbelieving the certificate issued by the Government Dispensary, Mahabubnagar. In the absence of recording finding by the Enquiry Officer and recording reason for disbelieving the certificate issued by the Government Dispensary, Mahabubnagar the penalty imposed against the petitioner is illegal, not commensurating with the gravity or seriousness of the misconduct. Hence, I find that the petitioner succeeded in establishing that he was prevented by a sufficient cause which is beyond his reasonable control.

Learned counsel for the petitioner, in support of his contention that the dismissal from service for overstay is illegal, placed reliance on a decision of the Apex Court in ***Giriraj Sharma*¹**, where the Apex Court in Para 2 of the decision held that when the employee had explained the circumstances in which it was inevitable for him to extend leave as he was forced to do so on account of unexpected circumstances, overstay after expiry of sanctioned leave does not warrant such harsh punishment since the circumstances shown that it was not his intention to wilfully flout the order, therefore set-aside the penalty of dismissal.

The Apex Court while dealing with case of overstay passed such an order but in the present case, the petitioner was absent without applying any kind of leave. Even then, the same principle can

be applied for the reason that the petitioner was able to substantiate that he had no intention in absenting himself but prevented by a cause which is beyond his reasonable control *i.e.*, severe back pain. The nature of employment of the petitioner involves maximum care and caution and while driving the vehicle he has to take care of large number of travelling public. If his concentration gets diverted, due to his severe back pain, the lives of travelling public will be at stake. Due to his sickness, there is a chance of his concentration being diverted. Therefore, absence of the petitioner for 15 days and extension of leave, thereafter, cannot be said to be with an intention to avoid his duties and, at best, it can be said that it is in the interests of travelling public. In ***Mukul Kumar Choudhuri***⁸, the Apex Court while dealing with similar circumstances, when an employee was continuously absent for 6 months, without prior sanction of any kind of leave, set-aside his removal, converted the same to imposing penalty to loss of pay for the period from the date of his removal till the date of reinstatement, exercising power under Article 226 of the Constitution of India. Even in the latter decision in ***Giriraj Sharma***¹, the Apex Court opined that overstay of 12 days does not warrant harsh punishment. In ***Janaki Ramudu***², the Division Bench of this Court was of the opinion that the punishment shall not be harsh, when employee is able to establish the cause for his absence.

The cumulative effect of the law declared by the Apex Court and various High Courts is that the penalty imposed against an employee for misconduct must commensurate with the gravity and the administrative authorities are expected to pass such orders in all fairness. Removal of an employee just for his absence of 15 days is nothing but using a sledgehammer to crack a nut or using a lethal weapon against a parrot and it is nothing but crushing the future life of an employee both financially and mentally, since there is no possibility for him to secure any other employment in his near future. Therefore,

the penalty imposed against the petitioner is harsh and it is totally unfair on the part of the respondents, since the discretion which vested on them was not properly exercised in recording any finding thereon.

One of the reasons for imposing such penalty is the subsequent absenteeism of the petitioner but, in normal course of events, the subsequent conduct of the employee cannot be taken into consideration while imposing penalty and this question is no more *res-integra* in view of the unreported Division Bench decision of this Court in ***D. Yadagiri Vs. A.P.S.R.T.C. Represented by its Managing Director, Musheerabad***^[12], in Para 5 of the decision, this Court held that it is not open to the disciplinary authority to take into account the subsequent unauthorized absence, which was not put to the employee and it was not made the subject matter of enquiry before relying upon the same in the matter of imposition of punishment.

Earlier, when similar question came up before the Division Bench decision of this Court in Writ Appeal No.769 of 2005 on the same issue and the matter went up to the Apex Court and the Apex Court also upheld the view expressed by this Court. Therefore, taking into consideration of subsequent conduct of the employee, imposing punishment is another illegality, committed by the respondents-corporation.

Sri B. Mayur Reddy, learned standing counsel appearing for the respondents-corporation, mainly contended that this Court must be slow in interfering with the penalty imposed by the administrative authority and normally the Court cannot interfere if the penalty imposed by the administrative authorities is in consonance with the regulations but this contention holds no substance in view of the law declared by the Apex Court and this Court in various decisions referred supra. Hence, I find no ground to sustain the order under challenge, passed by the respondents against the petitioner.

In view of my foregoing discussion, it is clear that the penalty must commensurate with the gravity or seriousness of the misconduct

and that the respondents are not entitled to take into consideration the subsequent conduct when it does not form part of the charge sheet and not put to the employee. When the administrative orders are irrational and illegal the Court, while exercising power of judicial review under Article 226, can interfere in view of Wednesbury test. Hence, the penalty imposed against the petitioner is hereby set-aside holding that the penalty is harsh, did not commensurate with gravity of misconduct, though rules permit, since the petitioner is able to explain the reason for his absence *i.e.*, severe back pain. However, in view of the principle laid down by the Apex Court in ***B.C. Chaturvedi Vs. Union of India***^[13], I find that it is a fit case to direct the respondents to impose appropriate penalty, commensurating with the gravity or seriousness of the misconduct, within a period of three (3) months from the date of receipt of a copy of this order, after following due procedure under Regulations.

With the above direction, the Writ Petition is allowed.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 29-04-2016.

Note:

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date. 29-04-2016

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[\[1\]](#) 1994 Supp (3) SCC 755

- [\[2\]](#) MANU/AP/0073/2016
- [\[3\]](#) AIR 1958 SC 398
- [\[4\]](#) 1955 1 SCR 1104
- [\[5\]](#) AIR 1959 SC 725
- [\[6\]](#) 2015 (2) ALD 41
- [\[7\]](#) JT 2003 (2) SC 295
- [\[8\]](#) AIR 2010 SC 75
- [\[9\]](#) 1997 (7) SCC 463
- [\[10\]](#) (1997) 3 SCC 72
- [\[11\]](#) 2007 (4) SCC 669
- [\[12\]](#) W.A. No.1126 of 2009
- [\[13\]](#) AIR 1996 SC 484