

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

Date of Decision: 9th September, 2016

+ **W.P.(C) 7826/2008 & CrI. MA 15112/2008**

JOHNSON AND JOHNSON LTD.

..... Petitioner

Through: Mr. Raj Birbal, Senior Advocate
along with Ms. Raavi Birbal, Mr.
Prem Prakash & Ms. Seema Singh,
Advocates

versus

GAJENDRA SINGH RAWAT

..... Respondent

Through: Mr. Kaushal Yadav & Mr.
Vivekanand Rana, Advocates for
respondent No.1.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. The challenge in this writ petition under Arts. 226/227 of the Constitution of India is to the award dated 14.03.2008 passed by the learned Labour Court vide which the claim filed by the respondent (hereinafter referred to as 'the workman') was allowed and he was awarded compensation to the tune of Rs.10,44,000/- alongwith interest @ 18% per annum from the date of termination till realization besides litigation costs of Rs.10,000/-.
2. The factual matrix of the case leading to filing of the present petition succinctly stated is as follows:

3. The workman was initially appointed on six months' probation with effect from 01.11.1970 by the petitioner (hereinafter referred to as 'the management') and on successful completion of probation period, he was given permanent employment with effect from 01.05.1971 as 'Peon-cum-Packing Assistant'. Thereafter, he was promoted as Senior Packer with effect from 01.01.1983 by the Controller of Head Office at Mumbai and then as an Assistant Charge Head with effect from 01.01.1990. On 17.02.1999, the Delhi Branch of the management issued a letter terminating the services of the workman with immediate effect on account of misconduct of theft and stealing the privileged and confidential documents from the branch office premises and threatening the employer to circulate it to the outside agencies. On receipt of the termination order, the workman sent his reply dated 05.03.1999 refuting the allegations and seeking reinstatement. The demand notices were also sent. Thereafter the workman filed an application for conciliation before the Conciliation Officer, Delhi Administration, Karampura, Delhi. On failure of conciliation proceedings, Mr Satish Gathwal, Secretary Labour, Government of NCT, Delhi on 14.10.1999 vide reference No. F.24 (3917)/99Lab./4242226 referred the dispute between the management of M/s Johnson & Johnson Ltd. and its workman Shri Gejendera Singh Rawat, in the following terms of reference:

“Whether the dismissal of Sh. Gajendera Singh Rawat is illegal and unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

4. Pursuant to the reference, claim was filed by the workman stating therein that the management after his long period of service, accused him of having committed theft, dismissed him from service without even serving any show cause notice or charge sheet. Even no inquiry was held against him nor was he afforded any opportunity of being heard. The action of the employer is in violation of provisions of natural justice and in violation of Ss. 25F, 25N r/w section 2 (oo) of the I.D. Act. No payment of wages in lieu of notice and compensation were paid as prescribed. According to him, he was victimized by the Branch Manager on account of his bias, malafide and sense of revenge because of his refusal to continue to work as domestic servant at his residence before and after office hours and also on sundays and other holidays, which he used to perform earlier. According to workman, he was given so-called confidential papers by the Branch Manager for keeping them at his residence and since the workman sent these papers to Head Office, the branch manager got agitated. The branch manager had also placed him under suspension in another case since 24.06.1997 and had prohibited his entry into the premises of Delhi branch office since that date. In fact, the workman was even accompanied by security guards whenever he was called by the inquiry officer to attend the proceedings while going into and coming out of the room and even when the inquiry proceedings took place. According to the workman there was large scale corruption and corrupt practices going on at Delhi branch office of the establishment, causing much loss to the business of the employer and when the

workman tried to bring the same to the notice of the said branch manager, he did not take any action to stop the same. The said activities were being carried out with the connivance of the said branch manager. At this workman sent a complaint dated 16.08.1995 to the Managing Director of the establishment at Mumbai, bringing to his notice the said corrupt practices going on at Delhi branch office with the connivance of the branch manager. He also complained against the branch manager stating that the said branch manager had started giving dealerships to his relatives. A request was made to hold an inquiry and to give a personal hearing to the workman. Workman also sought his transfer from the office to some other branch. However, no action was taken by the Managing Director on the basis of workman's complaint. On the other hand, branch manager became very furious and started finding ways and means to get rid of the workman. The branch manager entered into a conspiracy with 3-4 co-workmen to involve him in some false case. Pursuant thereto, workman's co-workers i.e Sh. Jaidrath, M.K. Lamba, Shashi Nair & Chandra Singh started harassing him. A complaint was made by the workman on 16.06.1997 against the co-workers. On 21.06.1997, one of the co-workers i.e Sh. Chandra Singh attacked him with a hammer and broke the bone of his right index finger. Instead of taking any action against the co-workers, a disciplinary action was taken against the workman and he was suspended on 24.06.1997. A charge sheet was served upon him on 15.07.1997 levelling false charges and a domestic inquiry was initiated against him. A false FIR was also lodged against the workman by them at the

behest of the branch manager. The workman also filed a criminal case against the branch manager as well as co-worker Sh. Chandra Singh. After all these incidents, workman requested the branch manager to take back the packet of papers which he had handed over to him during emergency for keeping at his residence but the branch manager asked him to continue to keep the said papers at his residence. Thereupon, the workman sent the packet of papers to the Managing Director Sh. N.K. Ambani at the employer's Head Office at Mumbai and requested him to initiate necessary action against the branch manager. In response to this letter, the Branch Manager was called by the Head Office, Mumbai and when he returned to Delhi, he dismissed the workman from service vide order dated 17.02.1999 with immediate effect. It was learnt by the workman that the branch manager had also lodged a complaint with the police with regard to the allegations of theft. However, the police has not initiated any criminal proceeding against him. From 1970 till 1994 so long as the workman was doing free domestic service at the residence of the branch manager, the branch manager was giving the workman good work report. However, from 1995 onwards when the workman refused to do any more domestic service for the branch manager, he started harassing the workman in one way or the other, hence, he was being victimized. The workman prayed for setting aside his dismissal and reinstatement with continuity along with full back wages and all consequential monetary benefits alongwith cost of litigation.

5. The claim of the workman was contested by the management wherein it was not denied that the workman was employed in Delhi on 01.09.1970 and confirmed on 01.05.1971 and thereafter he was promoted from time to time. According to the management, the workman sent a letter dated 02.02.1999 to the Managing Director of the company at the registered office and the letter was accompanied by xerox copies comprising 231 sheets which were privileged and confidential documents of the company stored at Delhi branch office. On receipt of the said letter, investigation was carried out into the company's record in the branch office and it was found that the originals of the said documents were missing. It was evident from the Xerox copies sent to the company along with letter dated 02.02.1999 that it was the workman only who had stolen or illegally taken away the original documents from the branch office premises and got made xerox copies thereof which was in breach of terms of his employment besides being offence under the law. This act was also subversive to discipline and good behaviour. The workman even threatened by the said letter that he would send the copies of the confidential documents to outsiders as well as to government. This act of the workman constituted not only misconduct but total loss of confidence in him and as such his continuing service in the company endangered the business of the company. In the circumstances and keeping in view the past record and the gravity of the acts of misconduct, his services were terminated w.e.f. 17.02.1999. As regards the procedural compliance, it was claimed that one month's salary in lieu of the notice was paid vide cheque enclosed with the letter. By the letter of

termination, the workman was also called upon to hand over the original documents, which he did not hand over. The allegations of the workman regarding his being compelled to render domestic service at the residence of Mr. Malhotra, branch manager were denied. It was alleged that the workman was earlier issued a charge sheet in respect of misconduct and he was suspended, pending inquiry and was also paid subsistence allowance @ 100% of wages from the date of suspension itself. As such, when termination letter dated 17.02.1999 was issued to him, workman was already receiving subsistence allowance. It was denied that workman had ever been victimized by the branch manager or that for taking revenge he was dismissed from service. The incident of assault on the workman by co-worker was denied. It was alleged that the inquiry qua the said act against the workman was conducted and concluded in which the inquiry officer found the charges leveled against the workman to have been proved but no further action was taken on the same as service of workman had already been terminated vide letter dated 17/02/99. It was denied that the branch manager had handed over the custody of the papers/documents to the workman. The claim was without any merit and it was prayed that the same be dismissed.

6. On the basis of the pleadings of the parties, following issues were framed:
- (1) Whether the order of termination of the services of workman w.e.f. 17/02/1999 is justified and legal?
 - (2) To what relief, if any, is the workman entitled against the management in terms of reference?

7. The workman examined himself whereas on behalf of the management S.K. Malhotra, Branch Manager was examined. After perusing the testimony of the workman and the witness from the management side and the documents placed on record, learned Labour Court decided the Issue No.1 in favour of the workman and accordingly vide Issue No.2 granted compensation to the extent of Rs.10,44,000/- alongwith interest and costs of litigation.

8. Feeling aggrieved, the present petition has been filed by the management.

9. I have heard Ms. Raavi Birbal, learned counsel for the petitioner-management and Mr. Kaushal Yadav, learned counsel for the respondent-workman at great length and perused the record. It is submitted by learned counsel for the petitioner that the workman dispatched copies of 231 sheets comprising strictly confidential documents of the company kept at Delhi Branch Office of the company to the Managing Director of the company threatening the Managing Director to take appropriate action against the branch manager failing which he would send copies of the same to the different departments of Government of India. He was guilty of stealthily removing secret and confidential documents pertaining to the management of the company. The management completely lost confidence in him as such the service of the respondent-workman was terminated due to gross act of misconduct. The continuance of the workman could have endangered the business of the company and, therefore, the management was right in terminating him. By relying upon *Air India Corpn. Bombay v V.A. Rebellow & Anr.*, (1972) 1 SCC 814, it was submitted that if the

loss of confidence is bonafide, the same should not be interfered with. Learned counsel for the petitioner – management further submits that the Labour Court has given a finding to the effect that there is no evidence on record to show that workman divulged photocopies of confidential documents to any outside authority or agency. He has only left it upon Head Office to take care of irregularities and that the workman seems to have acted in the interest of the company. It was submitted that the workman had blackmailed the managing director of the company that if he would not accede to his request then he would send the documents to outside agency. Mere blackmailing and stealing the documents was sufficient ground for loss of confidence on the employee. Blackmailing the managing director is not acting in the interest of the organization. The workman has admitted in the cross examination that alongwith the letter dated 02.02.1999, he sent the confidential documents of the company. It was self-evident from the Xerox documents that he had stolen the same and illegally took out from the branch office. There is no substance in his plea that the documents were handed over to him by the branch manager for keeping the same in safe custody during the period of emergency as the emergency was imposed somewhere in the year 1975 whereas the documents sent to the managing director of the company were of much later date, which itself shows that the workman had stolen the documents from the branch office. It was further submitted that the workman had written a complaint to the managing director against the branch manager wherein he had alleged about theft of stocks, bungling in the account,

fake and excess billing, theft of stationary, special favours, but throughout his letters he did not mention anything about the handing over of the documents or any packet, as stated by him, by the branch manager. It was for the first time when he had sent his reply to the termination letter that he had concocted a story that he was doing the household work for the branch manager and during emergency branch manager handed over to him the documents. This was a gross misconduct coupled with blackmailing the managing director threatening him to make the documents public in case no action is taken which tantamounts to complete loss of confidence and, therefore, the management was justified in terminating the services of the workman. It was further submitted that there was no violation of any rules as in lieu of one month notice, one month's pay was given to the workman. It is further submitted that besides this misconduct, the past conduct of the workman was also considered as he was already under suspension for assaulting another co-worker – Chandra Singh for which the enquiry was going on. Although it was admitted that prior to terminating the services of the workman, no show cause notice was served upon him nor any enquiry was held. However, it was submitted that defective enquiry and no enquiry have been put at equal footing by the Supreme Court and it has been held time and again that in case no enquiry has been held or defective enquiry has been held, the management should be given opportunity to lead evidence before the Labour Court which was availed by the management and misconduct of the workman was duly proved. Reliance in this regard was placed on *Municipal*

Corporation, Greater Bombay v P.S. Malavenkar & Ors., 1978 II LLJ 168 (SC).

Counsel further submits that a perverse finding was given by the Labour Court by observing that the management has not specified as to on which date and at what time the workman had stolen the documents. It was not possible for the management to know on which date and at what time the workman had stolen the documents. Had it been known, it would not have allowed him to do so. Counsel further submits that at the time of termination of the workman, owing to business recession, the management offered voluntary retirement scheme to the then employees at Delhi branch office and all the employees submitted their applications. Thereafter there was no employee on the rolls of Delhi office. This fact was duly brought on record of the Labour Court. There was long delay since the services of the workman were terminated; that being so, the Labour Court ought not have been granted such a huge compensation to the workman. As such, it is submitted that the impugned award being perverse, deserves to be set aside.

10. Per contra, learned counsel for the respondent – workman submits that there is no illegality or infirmity in the impugned award since it has been duly proved that the termination of service of the workman was absolutely arbitrary and whimsical and there was no substance in the allegations of theft. Moreover, the termination was in violation of principles of natural justice as neither any enquiry was held nor any opportunity of hearing was afforded to the workman. Even one month's notice as per the Model Standing Orders under Schedule 1 of Industrial Employment (Standing Orders) Central Rules, 1946 was not served

upon the workman. Lastly, it was submitted that the scope of interference by High Court under Articles 226 and 227 of the Constitution of India in an award passed by the Labour Court is very limited and can be interfered only when the order passed by the Labour Court on the face of it is perverse and illegal as such the writ petition is liable to be dismissed with exemplary costs.

11. I have bestowed my considerable thoughts to the respective submissions of the learned counsel for the parties and have also perused the written submissions filed by them.

12. First question for consideration is what is the effect of not conducting a disciplinary inquiry before terminating the services of the workman. The issue was dealt in detail in *Municipal Corporation of Greater Bombay* (supra). In that case, the services of the workman were terminated on account of unsatisfactory record of service. On factual matrix of the case, it was found that the order of termination was not punitive in character so as to invite disciplinary inquiry. It was further held that even if order of termination of service of the workman was punitive in character and could not have been passed save and except as a result of a disciplinary inquiry, the impugned order cannot be struck down as invalid on the ground of non-compliance with the requirement of standing orders since the workman availed of the opportunity open to her before the Labour Court when the management adduced sufficient evidence to show that the impugned order terminating the service of the workman was justified. This view was fortified by a catena of decisions where it has been consistently held that no distinction can be

made between cases where the domestic enquiry is invalid or defective and those where no enquiry has in fact been held as required by the relevant Standing Orders and in either case it is open to the employer to justify his action before the Labour Tribunal by adducing all relevant evidence before it. Reference in this regard was made to *The Punjab National Bank Ltd. v. Its Workmen* (1960) 1 S.C.R.806, *Management of Ritz Theatre (P) Ltd. v. Its Workmen* (1963) 3 S.C.R. 461, *Workmen of Motipur Sugar Factory (Private) Ltd. v. Motipur Sugar Factory* (1965) 3 S.C.R. 588, *Delhi Cloth and General Mills Co. Ltd. v. Ludh Budh Singh* (1972) 1 LLJ 180, *State Bank of India v. R. K. Jain and Ors.* (1972) 1 S.C.R. 755, *Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors.* (1973) 3 S.C.R. 587 and *Cooper Engineering Limited v. Shri P. P. Mundhe* (1976) 1 S.C.R. 361.

In *Satna Cement Works & Anr v Bachchan Lal Srivastava & Ors*, 1997 II CLR 67 also reference was made to *D.K. Yadav v J.M.A. Industries*, 1993 (67) FLR 111 (SC) wherein it was held that although the recent trend is to insist on giving an opportunity of hearing, despite any provision in the Standing Orders, however, even if no enquiry was held before termination of services, the employer can lead evidence before the Tribunal to justify its action. In view of the same, even if before terminating the services of the workman, no enquiry was held, the termination order cannot be held to be illegal on that ground alone as the management availed the opportunity of leading evidence before the Labour Court and adduced evidence justifying its action taken against the workman.

13. As regards the submissions raised by the workman regarding non-compliance of Rule 13 of the Industrial Employment (Standing Orders) Central Rules, 1946 requiring giving of one month's notice before terminating the service of the workman, it will be advantageous to reproduce the same as under:-

“13. Termination of Employment: (1) For terminating employment of a permanent workman, notice in writing shall be given either by the employer or the workman – one month's notice in the case of monthly rated workman and two weeks' notice in the case of other workman; one month's or two weeks' pay, as the case may be, may be paid in lieu of notice.”

A bare perusal of this rule goes to show that the services may be terminated by giving one month's notice or paying for one month pay in lieu of notice.

14. Besides that the workman was appointed as a Peon-cum-Packing Assistant vide letter dated 06.11.1970. Condition 9 of the letter dated 06.11.1970 stipulated that:

- (a) This engagement may be terminated by either party giving to the other at any time, notice in writing of one whole calendar month or **at our option by paying you remuneration for one month in lieu of notice and expiring at any date.**
- (b) Notwithstanding anything to the contrary herein contained, misconduct on your part (such misconduct to be determined by this company) will entitle us to terminate your services without any notice or payment in lieu of notice.

15. It is the case of the management that while terminating the services of the workman vide letter dated 17.02.1999 on account of misconduct and loss of

confidence, one month salary in lieu of notice vide cheque number 011090 dated 17.02.1999 for Rs.5900/- drawn on Hong Kong and Shanghai Bank Corporation Ltd., New Delhi was sent to the workman. That being so, there is no violation either of the Standing Orders or the terms and conditions of employment of the workman whereby in lieu of one month's notice, one month pay was given to the workman while terminating his services.

16. It is also undisputed case of the parties that on 02.02.1999, the workman sent a letter addressed to the managing director at the registered office of the company at Mumbai and it will be in fitness of things to reproduce the English translation of the said letter.

"To

*The Managing Director, Johnson & Johnson Ltd.
30, Forejett Street,
Mumbai – 400 031*

Subject: For necessary action.

Sir,

*Prior to this also, I have been making complaints against the branch manager of Delhi branch office but you have not taken any appropriate action on the same. Now, I am writing this last letter to you and I am also sending **some confidential papers** which are **most confidential**.*

I hope that you will inquire about these confidential letters from the branch manager and will also give reply to me.

If you failed to give any satisfactory reply by 28.02.1999, then copies of all the confidential letters will be sent to different departments of government.

*Gajender Singh Rawat
02.02.1999"*

17. A bare perusal of this letter goes to show that the workman not only sent the confidential documents to the managing director of the company but also

threatened him to circulate the documents to different departments of the government in case no satisfactory reply is sent to him by stipulated date.

Condition (8) of his employment letter dated 06.11.1970 stipulated as under:

“8. You shall not either during your engagement with the Company or thereafter divulge to any person whatsoever any formulae, processes, methods, machines, compositions, ideas or any other information concerning the business and affairs of the company or any of its dealings, transactions or affairs which came to your knowledge during the course of your employment or use any of the same for your own benefit”.

18. It is the case of the management that the very fact that the Xerox copies of the confidential documents were sent to the managing director of the company reflects that the same were stolen by the workman from the office of the company which was an act subversive of discipline and tantamount to misconduct and was in breach of his terms of employment and a clear case of theft of company's property. The said act constitutes loss of confidence in the workman. On the other hand, the case of the workman as revealed in his statement of claim more particularly para 7(i) of grounds filed before the Labour Court and thereafter was that these documents were given to him by Mr S.K. Malhotra, Branch Manager for keeping in safe custody at his residence when **the emergency was declared in the country in the 70's** stating that these are confidential papers and it was dangerous to keep the same in the branch or even at the residence of the branch manager. It was further alleged that the workman had given the said packet of confidential papers to his wife – Smt. Dhaneshwari Rawat for keeping the same in safe custody. The branch manager from office used to ask the workman to show

the said papers to him and after inspecting the same he used to return the same to the workman for keeping the same at his residence. Emergency was imposed in the country on 25th June, 1975 and was withdrawn on 21st March, 1977. However, a perusal of the documents placed on record goes to show that some of the documents pertain to year 1960 while some pertain to the period 1978, 1979, 1980, 1982, 1987 or thereafter, i.e., much after the emergency imposed in the year 1975. That being so, if the plea of the workman is accepted to be correct that these documents were handed over to him by the branch manager during emergency period 1975 to 1977, these documents should have been prior to that period but as stated above some of the documents pertain to much later date. Confronted with this situation during the course of arguments, counsel for the respondent – workman for the first time took the plea that the documents placed on record were not the same documents which were sent by the workman to the managing director of the company. However, no such plea was taken by him at any earlier stage of the proceedings either before the Labour Court or before this Court. Moreover, if according to the workman, the management had replaced the documents, he could have produced original document. Moreover, as per his own case, he had also given a set of Xerox copies of the documents to police station Kirti Nagar, as such, he could have summoned the documents from the Police Station to prove as to what documents were sent by him to the management but that was not done. Mr S.K. Malhotra, Branch Manager, has categorically denied that he handed over any document to the workman. Moreover, according to the

workman, relation between him and branch manager became strained after 1994 when he stopped working at his residence. If that is so, it is not understandable why the branch manager would have allowed the confidential documents of the company to remain with the workman who had started writing letters to the Head Office of the company pointing out the irregularities being committed in the branch office at Delhi including allegations against the branch manager.

19. The finding of the learned trial court that management failed to specify as to on which date and time the documents were stolen by the workman cannot be sustained. Although it is true that it was alleged that FIR was lodged against the workman for committing theft of the document, however, neither the FIR has been proved nor the outcome of those proceedings but fact remains that the workman admits having possession of the documents which were sent to managing director of the company, therefore, it is for him to prove as to how he came in possession of these documents and the plea taken by him that the same was handed over to him by the branch manager during emergency is not proved as noted above. Learned Trial Court took the word during emergency as 'emergency period' which is contrary to the case set up by the workman as it was specifically alleged in para 7(i) of the grounds in his statement of claim that documents were given to him when emergency was declared in the country in the seventies. Much emphasis was laid by learned Trial Court on the cross-examination of branch manager when he admitted that after workman was suspended in 1997, he had no access to record of the company. The removal of the documents must have been

prior to this period as they pertain to the period 1960 till 1987. The Manager could not have given the details as to when the documents were stolen by the workman as it was only after the same were sent by the workman to Head Office at Bombay that inquiry was made and it was revealed that documents were missing.

20. Moreover, the act of workman in sending voluminous documents which according to him were 'very confidential', to the managing director of the company coupled with a threat given to him to make the same public by sending it to different departments of the government, was not only in violation of terms of appointment and condition of service but such an act on the part of the workman was a breach of trust. The management had completely lost confidence in the workman and therefore it did not deem it appropriate to keep him in service any longer and therefore his services were terminated vide letter dated 17.02.1999. In *Karnataka SRTC v. M.G. Vittal Rao*, (2012) 1 SCC 442 on which reliance was placed by both the parties, dealing with the aspect of 'loss of confidence', it was held as under:

"25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. (Vide: Air India Corporation Bombay v. V.A. Ravellow: AIR 1972 SC 1343; Francis Kalein and Company Pvt. Ltd. v. Their Workmen: AIR 1971 SC 2414; and Bharat Heavy Electricals Ltd. v. M. Chandrashekhhar Reddy and Ors. : AIR 2005 SC 2769).

26. In **Kanhaiyalal Agrawal and Ors. v. Factory Manager, Gwalior Sugar Company Ltd.** : AIR 2001 SC 3645, this Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved.

(See also: **Sudhir Vishnu Panvalkar v. Bank of India** : AIR 1997 SC 2249).

27. In **State Bank of India and Anr. v. Bela Bagchi and Ors.**: AIR 2005 SC 3272, this Court repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence. While deciding the said case, reliance has been placed upon its earlier judgment in **Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik**: (1996) 9 SCC 69.

28. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two. (Vide: **Binny Ltd. v. Their Workmen and Anr.** : AIR 1972 SC 1975; **The Binny Ltd. v. Their Workmen** : AIR 1973 SC 1403; **Anil Kumar Chakraborty and Anr. v. Saraswatipur Tea Company Ltd. and Ors.**: AIR 1982 SC 1062; **Chandu Lal v. The Management of M/s. Pan American World Airways Inc.**: AIR 1985 SC 1128; **Kamal Kishore Lakshman v. Management of M/s. Pan American World Airways Inc. and Ors.**: AIR 1987 SC 229; and **M/s. Pearlite Liners Pvt. Ltd. v. Manorama Sirsi**: AIR 2004 SC 1373).

29 In **Indian Airlines Ltd. v. Prabha D. Kanan**: AIR 2007 SC 548, while dealing with the similar issue this Court held that "loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved.

30. In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee. (Vide: **A.P. SRTC v. Raghuda Shiva Sankar Prasad**: AIR 2007 SC 152).

31. ... it is a settled legal proposition that in a case of misconduct of grave nature like corruption, theft, no punishment other than the dismissal may be appropriate. (Vide: **Pandiyan Roadways Corpn. Ltd. (supra)**; and **U.P. State Road Transport Corporation v. Suresh Chand Sharma**: (2010) 6 SCC 555).

21. The expression 'misconduct' has not been defined either in the Industrial Disputes Act, 1947 or in the Industrial Employment (Standing Orders) Act, 1946. The dictionary meaning of the word misconduct is 'improper behaviour'; 'intentional wrong' doing or 'deliberate violation of a rule of standard of behaviour'. In so far as the relationship of industrial employment is concerned, a workman has certain express or implied obligations towards his employer. Any conduct on the part of an employee inconsistent with the faithful discharge of his duties towards his employer would be a misconduct. Any breach of the express or implied duties of an employee towards his employer, therefore, unless it be of trifling natures would constitute an act of misconduct. In industrial law, the word 'misconduct' has acquired a specific connotation. It cannot mean inefficiency or slackness. It is something far more positive and certainly deliberate. The charge of

'misconduct' therefore is a charge of some positive act or of conduct which would be quite incompatible with the express and implied terms of relationship of the employee with the employer. What is misconduct will naturally depend upon the circumstances of each case. In any case the act of misconduct must have some relation with the employee's duties to the employer. In other words, there must be some rational connection of the employment of the employee with the employer. If the act complained of is found to have some relationship to the affairs of the establishment, having a tendency to affect or disturb the peace and good order of the establishment or be subversive of discipline in any direct or proximate sense, such act would amount to misconduct. Conversely, if the act complained of has no relation to his duties towards his employer, it would not be an act of misconduct towards his employer.

22. Hon'ble Supreme Court in the case of *State of Punjab and Ors. v. Ram Singh Ex.Constable* reported in (1992) 3 SCR 634, had an occasion to consider what a misconduct means. It has been held that the word misconduct though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed

with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

23. What is misconduct will naturally depend upon the circumstances of each case. When there are standing orders, there would be no difficulty because they define misconduct. In the absence of the Standing Orders, however, the question will have to be dealt with reasonably and in accordance with commonsense. As to what acts can be treated as acts of misconduct, therefore, would depend on the facts and circumstances of each case. The expression 'misconduct' covers a large area of human conduct. Misconduct spreads over a wide and hazy spectrum of industrial activity, the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default are covered thereby. To some extent, misconduct is a civil crime which is visited with civil and pecuniary consequences.

24. Needless to say, act of workman was subversive of discipline and good behavior. The workman was also guilty of threatening the management that he would send the copies of the confidential documents to the outsiders including government which also amounted to misconduct of disclosing of privilege and confidential information of the company. The same was in breach of his terms of employment and clear case of theft of company's properties which constitutes loss of confidence in the workman. As seen above, if loss of confidence is bonafide, the same should not be interfered with. Besides that past conduct of the

workman was also taken into consideration while terminating his services. Admittedly, workman was facing a departmental inquiry on the allegations of assault on co-workman and was under suspension. The inquiry which was pending at the time of termination of the workman ultimately resulted in proving the guilt of the workman even in that inquiry. However, in view of the fact that workman already stand terminated, no further action was called for.

25. There is no force in the plea of the workman that termination was result of victimization at the hands of Branch Manager, as he stopped working at his residence since 1994 because if that was the case why the workman was not removed immediately thereafter. He has been writing letters against the Branch Manager and irregularities in the company since 1995. He was placed under suspension in the year 1997 and departmental inquiry was initiated which was still pending in the year 1999 when letter dated 2.2.1999 was sent to the Head Office whereafter it was decided that it was not in the interest of the company to keep workman any longer in the employment of the company and then he was terminated vide letter dated 17.2.1999.

26. The only question left for consideration is as to whether the punishment of termination of service is shockingly disproportionate to the misconduct committed by the workman.

27. The concept of the term "shockingly disproportionate" is very much known and familiar to Industrial Jurisprudence. The Apex Court in the case of *Hind Construction and Engineering Co. Ltd. v. Their Workmen* case reported in

AIR 1965 SC 917, while dealing with the issue regarding punishment has observed as under:

“6... The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But, where the punishment is shockingly disproportionate regard being had to be particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.

28. Dealing with the Court's power to interfere with the punishment imposed upon the delinquent employee, in **G.V. Triveni Prasad vs Syndicate Bank and Ors.** (2007) II LLJ 685 (AP), it was observed as under:-

“22. The Court's power to interfere with the punishment imposed on the delinquent employee has become subject-matter of scrutiny in large number of cases. The terms and phrases like arbitrary, unreasonable, unconscionable and shockingly disproportionate are often used by the advocates representing the delinquent employees who seek intervention of the Court for invalidation of the order of punishment. The doctrine of proportionality and Wednesbury rule have also been pressed into service for persuading the Courts to interfere with the employers' prerogative to punish the employee. But, the Courts have to constantly remain guard against adopting a populist approach in such matters and refrain from interfering with the punishment imposed by the employer on a delinquent employee. The power of judicial review in such cases should be exercised with great care and circumspection. Only in exceptional cases, the Court may interfere with the punishment, if it is convinced that the same is wholly arbitrary or shockingly disproportionate to the misconduct found proved. For determining this, the Court has to take into consideration the factors like length of service of the delinquent, the nature of duties assigned to him, sensitive nature of his posting and job requirement, performance norms, if any laid down by the employer, the nature of charges found proved, the past conduct of the employee

and the punishment, if any, imposed earlier. The Court has also to keep in mind the paramount requirement of maintaining discipline in the services and the larger public interest.

23. In **Ranjit Thakur v. Union of India**, 1988 CrL L.J. 158, the Supreme Court invoked the doctrine of proportionality for quashing the order of punishment because the same was found to be shockingly disproportionate to the misconduct found proved against the appellant. The proposition laid down in that case reads as under:

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

24. In **Union of India v. G. Ganayutham**, (2000) 11 LLJ 648 SC, the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

(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, 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.

*25. In **Om Kumar v. Union of India** (2001) 2 SCC 386, the Supreme Court considered the applicability of the doctrine of 'Proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur v. Union of India** (supra), **B.C. Chaturvedi v. Union of India** and held:*

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

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*27 In **Director General, RPF v. Ch. Sai Babu**, (2003) 1 SCR 729 the Supreme Court reiterated that*

the High Court should not ordinarily interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

“Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.”

28. *In V. Ramana v. A.P. SRTC*, (2005) III LLJ 723 SC, the Supreme Court approved the view expressed by the Full Bench of this Court in the matter of imposition of punishment and observed:

*“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.”*

29. In **G.B. Gupta** (supra) while referring to scope of judicial review in the matter of punishment, reference was made to **State of Gujarat v. Anand Acharya alias Bharat Kumar Sadhu**, (2007) 9 SCC 310, where the Apex Court has held;-

“The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the Court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof.

30. Keeping in view the ratio of the aforesaid judgments, it cannot be said that the punishment imposed upon the workman does not commensurate to the charges leveled against him. Though, in exercise of writ jurisdiction this Court should be loath in interfering with the findings of the Labour Court, but in view of the facts and circumstances available on record, the findings of the Labour Court cannot be sustained.

31. Learned Trial Court itself observed that keeping in view the long time span passed since the date of termination, it was appropriate to award compensation in lieu of reinstatement and back wages. Accordingly, it has awarded a sum of Rs.10,44,000/- as compensation to the workman along with interest @ 18% per annum, however, it is not clear as to on what basis this figure has been arrived at. Reliance was placed on **J.U. Akhtar vs. Management of M/s. Markfed Agro**, 2006 VIII AD (Delhi) 33 where this Court held that compensation

cannot be less than back wages to which workman is entitled to. Award of aforesaid amount was not calculated on the basis of back wages to which the workman may have been entitled to. That being so, there was no justification for awarding such excessive amount as compensation keeping in view the misconduct of the employee.

32. In view of the aforesaid discussions, the writ petition is allowed. The impugned award dated 14.3.2008 passed by the Labour Court is set aside. It is pointed out that the respondent has attained the age of superannuation. He has been paid gratuity and provident fund. It is directed that the payment already made to the respondent would not be recovered.

Pending applications, if any, also stand disposed of.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 09, 2016

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