

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.08.2017

Delivered on : 05.10.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.NO.16677 OF 2004 &
WPMP NO.19724 OF 2004, WVMP NO.403 OF 2005
& WMP 15796 OF 2010

The Chief General Manager,
State Bank of India,
Local Head Office,
Chennai.

... Petitioner

versus

1. The Central Government Industrial Tribunal-cum
Labour Court, Chennai,
Block No.1, Sastry Bhavan, Haddows Road,
Chennai-600 034.

2. Sri A.Bose ... Respondents

Prayer: This Writ Petition has been filed under Article 226 of the Constitution of India, seeking to issue Writ of Certiorari, to call for the records from the 1st respondent relating to the ID No.54/2002 and the Award dated 7.1.2004 on the file of the Central Government Industrial Tribunal cum Labour Court, the 1st respondent and quash the award dated 7.1.2004 made in I.D.No.54 of 2002.

For Petitioner : Mr.Anand Gopal for
M/s.T.S.Gopalan & Co.,

For Respondents : Mr.R.Arumugam for
M/s. Aiyar & Dolia for R2

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorari, to call for the records from the 1st respondent relating to the ID No.54/2002 and the Award dated 7.1.2004 on the file of the Central Government Industrial Tribunal cum Labour Court, the 1st respondent and quash the award dated 7.1.2004 made in I.D.No.54 of 2002.

2. The facts which led to the filing of the Writ Petitions are stated hereunder:

3. The second respondent/employee was appointed as a Clerk-cum-Typist on 22.12.1987 in the petitioner bank. While he was working as Clerk-cum-Typist in the Branch office at Mudukulathur, the second respondent/employee was found to have indulged in some acts of misconduct. Therefore, after getting explanation from the second respondent/employee and having not satisfied with the same, a charge memo was issued on 11.1.1989 containing four articles of charges. In response to the charge memo, the second respondent/employee submitted a reply on 20.09.1989 expressing his regret for the lapses committed by him. Therefore, an enquiry was conducted into the charges and on conclusion of the same, a report was submitted on 11.1.2000 holding that the charges were proved. Thereafter, a copy of the said report was furnished to the second respondent/employee and after obtaining his explanation to the report, the Disciplinary Authority passed order on 3.10.2000 imposing the penalty of removal from service. Earlier to the passing of the order, second show cause notice was issued on 16.9.2000 for which, a reply was sent on 28.09.2000. Aggrieved by the order passed by the Disciplinary Authority, the second respondent/employee preferred an appeal to the Appellate Authority on 15.11.2000. However, vide order dated 18.01.2001, the Appellate Authority rejected the appeal. Thereafter, the second respondent employee raised an industrial dispute in I.D.No.54 of 2002. The said dispute was referred for adjudication before the first respondent/Industrial Tribunal-Labour Court.

4. The first respondent/Labour Court vide its award dated 7.1.2004 substituted the penalty of removal from service into one of punishment of stoppage of two increments with cumulative effect. The first respondent has though held that the misconduct alleged against the second respondent/employee was established and proved, yet by invoking Section 11-A of the Industrial Disputes Act, 1947 (in short, 'the Act'), the first respondent/Labour Court interfered with the quantum of punishment imposed on the employee and ultimately found that the punishment was harsh and therefore, substituted its punishment instead of original punishment of removal from service. The award as such is now assailed in the present Writ Petition by the petitioner/management.

5. The broad issue which is placed for consideration before this Court is whether the first respondent/Labour Court is correct in invoking its discretionary power under Section 11-A of the Industrial Disputes Act in the circumstances of the case and whether the punishment imposed on the second respondent/employee by the Disciplinary Authority is harsh and

excessive to the charges framed against him.

6. Both the learned counsels appearing for the petitioner/management and second respondent/employee relied upon several decisions rendered by various High Courts as well as the Hon'ble Supreme Court in support of their respective contentions.

7. Since the issue to be decided by this Court falls in a narrow campus meaning that whether the first respondent/Labour Court is right in invoking its power under Section 11-A of the Act, interfering with the quantum of punishment imposed by the petitioner/management. In the said circumstances, the following decisions cited by the respective learned counsels are adverted to for arriving at a decision in the Writ Petition.

8. Mr. Anand Gopalan, learned counsel appearing for the petitioner/management, at the outset would submit that the charges being very serious in nature, viz., tampering of bank records, no lenient view can be taken in the matter as the original order of removal from service cannot be held to be disproportionate to the gravity of the misconduct alleged against the second respondent/employee. He would submit that an employee working in a bank, should be trustworthy since such employee deals with money transactions of the bank customers and utmost integrity is expected. Although, in the instant case, the second respondent had tampered with bank records only in respect of his own accounts, but the conduct clearly disclosed that the employee was untrustworthy and such employee's retention in the bank service, would be against the public interest and also prejudicial to the interest of the bank. According to the learned counsel, in such circumstances, no interference is called for at the hands of the first respondent under Section 11-A of the Act.

9. The learned counsel would further submit that for invoking Section 11-A of the Act, strong and valid reasons need to be spelt out for exercising of such discretion vested in the Industrial Tribunal/Labour Court and in the absence of strong and valid reasons, mere interference with the quantum of penalty is contrary to the established legal principles. According to him, in the instant case, the reasoning of the first respondent as found in para 11 of the award is not in consonance with the legal principles set out by the High Court and the Hon'ble Supreme Court of India.

10. The first respondent was merely guided by the fact that the second respondent/employee meddled with the records pertaining to his own account and therefore, the punishment was found to be harsh. Although the first respondent has clearly held that the misconduct was fully established against the

second respondent/employee, but strangely held that the same was not a serious one, warranting punishment of removal from service. Such a finding on the part of the first respondent/Labour Court, according to the learned counsel for the petitioner/management, cannot stand the test of proper judicial scrutiny.

11. In support of his contentions, the learned counsel for the petitioner/management would rely upon the following decisions, viz.,

a) (1996) 9 SCC 69 (Disciplinary Authority-cum-Regional Manager and others versus Nikunja Bihari Patnaik) , wherein, the Hon'ble Supreme Court has held as under in paragraph 7:

"7. It may be remembered that Charges Nos.1,6,8, and 9 were held to have been established in full while the remaining charges [except charge No.4] were held to be established in part. It is indeed a matter of surprise that in spite of the aforesaid findings, the High Court came to the opinion that it is not a case of misconduct. Regulation 24 of the Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 defines the acts of misconduct in the following words:

"24. Acts of misconduct: A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976."

Regulation 3 of the said Regulations may also be noticed:

"3(1). Every officer employee shall, at all times take all possible steps to ensure and protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations. (3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is

acting under the direction of his official superior. (4) Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority."

It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the Bank to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him, Breach of Regulation 3 is "misconduct" within the meaning of Regulation 24. The findings of the Enquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is that in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a Bank - for that matter, in the case of any other organization - every officer/employee is supposed to act within the limits of his authority. If each officer/ employee is allowed to act beyond his authority, the discipline of the organization/bank will disappear; the functioning of the Bank would become chaotic and unmanageable. Each officer of the Bank cannot be allowed to

carve out his own little empire wherein he dispenses favours and largesse. No organization, more particularly, a Bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned herein before, the very discipline of an organization and more particularly, a Bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and over-drawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit - huge profit, as the High Court characterizes it - they are no less blameworthy. It is wrong to characterize them as errors of judgment. It is not suggested that the respondent being a Class-I officer was not aware of the limits of his authority or of his powers. Indeed, Charge No.9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Enquiry Officer has recorded a clear finding that the

respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge No.8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterized as errors of judgment and not as misconduct as defined by the regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24."

b) "(2003) 4 SCC 364 (Chairman and Managing Director, United Commercial Bank and others versus P.C.Kakkar)", wherein, the Hon'ble Supreme Court has held as under in paragraphs 11 to 15:

"11. 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 the *Wednesbury's* case (*supra*) 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 to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the

Appellate Authority to reconsider the penalty imposed.

13. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in M.L. Keshwani's case. As was observed by this Court in Balbir Chand vs. Food Corporation of India Ltd. and Ors. (1997 [3] SCC 371), even if a co-delinquent is given lesser punishment it cannot be a ground for interference. Even such a plea was not available to be given credence as the allegations were contextually different.

14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996 (9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion.

Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

c) "(2005) 2 SCC 481 (*Bharat Heavy Electricals Ltd. versus M.Chandrasekhar Reddy & others*), wherein, the Hon'ble Supreme

Court has held as under in paragraphs 15 to 26:

"15. The Labour Court while exercising its discretion recorded that though the confidence of the employer on the respondent is shaken still it gave 3 reasons for exercising its discretion, they are :- (A) No instance of earlier misconduct are spelt. (B) It appears the respondent is an active participant in the cultural activities and for common cause of the employees. (C) Therefore, it felt the punishment of dismissal from service is harsh, in the facts and circumstances of the case.

These extenuating circumstances recorded by the Labour Court is in the background of the following proved facts :- (A) Title deeds deposited with the appellant for borrowing money were surreptitiously taken away without the permission of the appellant which act amounts to theft.

(B) The said documents so stolen were admitted to be used for the purpose of selling the property which amounts to fraud.

(C) The documents so taken was sought to be justified by a letter where the signatures are forged amounting to forgery.

17. The question the Labour Court ought to have asked itself while exercising its discretion under Section 11 A should have been whether the reasons given by it that there was no earlier misconduct or that the respondent is an active participant in cultural activities is sufficient to come a reasonable conclusion that a punishment of dismissal was harsh in the background of the finding recorded by itself as to the confidence of the employer on the respondent which according to the Labour Court was shaken by the misconduct.

18. In our opinion with no stretch of imagination either the extenuating circumstances recorded by the Labour Court or the exercise of its discretion could be termed either as reasonable or judicious. In our opinion even the learned Single Judge and the Division Bench erroneously held that the Labour Court had unlimited jurisdiction under Section 11-A of the Act. It is because

of the above erroneous legal foundation as to the vastness of power vested with the Labour Court. The High Court accepted the interference by the Labour Court in the award of punishment. Thus, the Labour Court as well as the High Court fell in error in granting the relief to the respondent which is challenged in this petition.

19. The learned counsel for the appellant has rightly relied upon the decisions of this Court in support of her argument. In *Air India Corporation (supra)* this Court held with reference to loss of confidence as follows :-

"..Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge.."

20. In *Francis Klein & Company Private Ltd. (supra)* this Court held :-

"In our view when an employer loses confidence in his employee, particularly in respect of a person who is discharging an office of trust and confidence, there can be no justification for directing his reinstatement."

"...Even this direction is not a valid direction because if once the Company has lost confidence in its employee, it is idle to ask them to employ such a person in another job. What job can there be in a Company which a person can be entrusted with and which does not entail reposing of confidence in that person.."

21. In *Janta Bazaar South Kanara (supra)* this Court held :-

"Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled"

"In case of proved misappropriation, in our view, there is no question of considering past service record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.."

22. In UPS RTC (supra) this Court held :-

"The employee has been found to be guilty of misappropriation and in such an event, if the appellant-Corporation loses its confidence vis-à-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own in allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment."

23. With reference to Section 11-A of the Act, in the case of The Workmen of Firestone Tyre & Rubber Company Ltd. (supra) this Court held :-

"Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimization."

"If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give every cogent reasons for not accepting the view of the employer"

24. In CMC Hospital Employees' Union & Anr. (supra) this Court held :-

"..Section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision"

25. In our opinion all the above judgments applies with full force to the

facts of this case. The Labour Court has itself come to the conclusion the management has lost confidence in the respondent. If that be the case the question of it exercising its jurisdiction under Section 11-A to alter or reduce the punishment does not arise.

26. That apart the reasons given by the Labour Court to reduce the penalty are reasons which are not sufficient for the purpose of reducing the sentence by using its discretionary power. The fact that the misconduct now alleged is the first misconduct again is no ground to condone the misconduct. On the facts of this case as recorded by the Labour Court the loss of confidence is imminent, no finding has been given by the courts below including Labour Court that either the fact of loss of confidence or the quantum of punishment is so harsh as to be vindictive or shockingly disproportionate. Without such finding based on records interference with the award of punishment in a domestic inquiry is impermissible."

d) "(2005) 10 SCC 84 (Damoh Panna Sagar Rural Regional Bank and another versus Munna Lal Jain)", wherein, the Hon'ble Supreme Court has held in paragraphs 17 to 21 as under:

"17. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996 (9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond

one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

18. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 LCR 120) it was observed:

"Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at".

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

19. These aspects were highlighted in *Chairman and Managing Director, United Commercial Bank and Others v. P.C. Kakkar* (2003 (4) SCC 364).

20. In the case at hand, the High Court's judgment is full of ifs and buts. There is no definite finding recorded that the punishment is suffering from any infirmity. No basis has been indicated to direct re-consideration of the quantum of punishment. It is to be noted that

the respondent had miserably failed to prove bonafides. Though he took the stand that he had informed the head office about the withdrawal, no material was placed before any of the authorities to prove it. It is to be noted that on the basis of material on record, it was concluded that the withdrawal was on 6.5.1992 and not on 9.5.1992 as was claimed. The respondent-employee has withdrawn a sum of Rs.20,000/- from the account of bank with the State Bank of India on 6.5.1992 and had withdrawn a further sum of Rs.5,000/- from the cash.

21. Above being the position the impugned judgment of the High Court cannot be maintained and the same is set aside. The Writ Petition filed by the respondent-employee, stands dismissed."

e) "2006 (1) SCC 63 (Karnataka Bank Ltd. Versus A.L.Mohan Rao)", wherein, the Hon'ble Supreme Court has held in paragraphs 1 to 7 as under:

"1. Heard learned counsel for the parties. This appeal is against the judgment of the Karnataka High Court dated 5-8-2003.

2. Briefly stated, the facts are as follows:

The respondent was working as an Attender at the Kudregundi Branch of the appellant Bank. He was charge-sheeted for gross misconduct inasmuch as he had colluded with one of the Branch Managers and enabled grant of a fictitious loan in the name of one Shri Ramakrishna, the real beneficiary being a person named B. Raghava. During the inquiry, the respondent admitted that he had prepared the loan agreement. He admitted that he had made the relevant entries in the ledger. He admitted that he had prepared the relevant credit and debit slips and also the withdrawal slip and also prepared DP note and the other documents required for the purposes of the loan. It was admitted that he had prepared these documents knowing that he had no authority to prepare these documents or to make any entries in the ledgers.

3. After the proper inquiry, the respondent was found guilty and his services were terminated. The respondent raised a dispute. The

Industrial Tribunal-cum-Labour Court, Bangalore dismissed the claim.

4. The respondent then filed a writ petition in the High Court. The learned Single Judge of the High Court found that the misconduct had been proved but on a mistaken notion of sympathy held that the correct punishment should be reinstatement without any back wages and without continuity of service except continuity of service for the purpose of terminal benefits.

5. The Division Bench has, by the impugned judgment, dismissed the appeal filed by the appellant.

6. In our view, a gross misconduct of this nature does merit termination. We fail to see what other type of misconduct would merit termination. It is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such a misconduct, it could never have been said that termination of service is not the appropriate punishment.

7. We, therefore, set aside the orders of the learned Single Judge as well as the Division Bench and restore the order of termination of service."

f) "(2006) 13 SCC 613 (LIC of India versus R.Dhandapani)", wherein, the Hon'ble Supreme Court has held in paragraphs 7 to 10 as under:

"7. It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11- A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be

exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. [1994 (1) SCALE 631)].

9. Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

10. The High Court found that the Industrial Tribunal had not indicated any reason to justify variations of the penalty imposed. Though learned counsel for the respondent tried to justify the Award of the Tribunal and submitted that the Tribunal and the learned Single Judge have considered the case in its proper perspective, we do not find any substance in the plea. Industrial Tribunals and Labour Courts are not forums whose task is to dole out private benevolence to workmen found by Labour Court/Tribunal to be guilty of misconduct. The Tribunal and the High Court, in this case, have found a pattern of defiance and proved misconduct on not one but on several occasions. The compassion which was shown by the Tribunal and unfortunately endorsed by learned single Judge was fully misplaced."

g) "(2016) SCC 619 (Kerala Solvent Extractions Ltd. Versus A.Unnikrishnan and another)", wherein, the Hon'ble Supreme Court has held in paragraphs 10 and 11 as under:

"10. . We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.

11. In this case, we have no hesitation to held that both the Labour Court and the High Court have erred. We allow the appeal, set aside the orders of the Labour Court and of the High Court in the writ petition, and dismiss the dispute raised by the respondent before the Labour Court."

12. Apart from the above, the learned counsel appearing for the petitioner/management also relied upon other decisions which do not relate to invocation of Section 11-A of the Act. However, the learned counsel placed reliance upon them in order to emphasize that if the charges are held to be proved and that charges are relating to integrity of the employee, no lenient view could be taken on the basis of the sympathy, particularly, for the persons who are placed in the position of trust, like the petitioner in the instant case.

13. By placing reliance on the above quoted judgments of the High Courts and the Hon'ble Supreme Court, the learned counsel for the petitioner/management would emphasize that the first respondent/Labour Court's award interfering with the quantum of penalty without giving adequate reasons, is unsustainable in law and therefore, the award is liable to be interfered with.

14. According to the learned counsel for the petitioner/management, entire gamut of decisions as cited supra, would point out a singular position that the punishment imposed on the petitioner should be shockingly disproportionate warranting interference with the quantum of punishment. As a corollary to that, when the first respondent/Labour Court interferes with the quantum of penalty, there must be compelling, strong and effective reasons in order to establish the factum of doctrine of "shockingly disproportionate". In the instant case, no such finding was rendered by the first respondent/Labour Court and therefore, the award is contrary to the above said legal principles and hence, it is liable to be set aside.

15. Per contra, the learned counsel appearing for the second respondent/employee would submit that the first respondent/Labour Court had indeed given reasons in para 11 of the award and the reasons set forth in the award were premised on the concrete finding that the second respondent/employee had merely meddled and tampered with the records only in respect of his own accounts and not in respect of other accounts of the bank customers. In fact, the first respondent had adverted to the various aspects of the charge memo and ultimately found that the charges were not serious enough warranting the imposition of severe penalty of removal from service. Such finding of the fact on the basis of the evidence let in before it, cannot be disturbed by this Court by exercising its judicial review under Article 226 of the Constitution of India. The first respondent/Labour Court is vested with the extraordinary discretionary power under Section 11-A of the Act and invocation of such power cannot be overturned by the High Court unless the finding of the Labour Court is perverse and baseless.

16. In support of his contentions, the learned counsel for the second respondent/workman would rely upon the following decisions, viz.,

a) "1997 (1) L.L.N. 517 (Asst.General Manager, UCO Bank & others versus S.R.Purohit)" wherein, the the High Court of Rajasthan has held that diversion of house building advance to personal use, may not be one of the misconducts envisaged in the Bipartite Settlement and punishment of censure imposed on the employee is liable to be set aside.

b) "1997 (2) L.L.N. 1176 (S.Murugadhas versus SBI, rep. By Chief Regional Manager, Coimbatore & another)" , wherein, the learned Division Bench of this Court has held that the employee of the bank who was dismissed after enquiry on charges of obtaining payment by fabricating trip sheet in respect of leave fare concession, had not played with any customer's account and

for the misconduct committed by him, deterrent punishment of dismissal is not called for. Having held so, the learned Division Bench substituted punishment of dismissal from service as one of reinstatement with continuity of service, but without back wages.

c) 1998 (4) L.L.N. 884 (Management of Essorpe Mills (P) Ltd., Coimbatore versus Presiding Officer, Labour Court, Coimbatore and another)", wherein, the learned Judge (as he then was) of this Court, held that if the Labour Court has exercised its discretion under Section 11-A of the Industrial Disputes Act, 1947 judicially and judiciously while modifying the punishment, the award cannot be interfered with lightly by this Court while exercising writ jurisdiction.

d) "(2006) 1 M.L.J. 48 (RM.Palaniappan versus The Transport Commissioner, Chepauk, Chennai & others)", wherein, the learned Division Bench of this Court, even in the case of bribery, the petitioner therein, was charged with the extreme punishment of dismissal from service, found to be disproportionate for the reason that the main object and thrust behind awarding of punishment to an offender is only to mend him and not to strangle, otherwise the very purpose of awarding punishment would not be served.

e) "2007-II-L.L.J. 285 (Santhanam R. versus Madura Coats Ltd. Tuticorin and another)" wherein, the learned Division Bench of this Court confirmed the award passed by the Labour Court, which modified the order of punishment of dismissal from service into one reinstatement without back wages by invoking Section 11-A of the Industrial Disputes Act, 1947.

f) "(2015) 8 SCC 272 (Nicholas Piramal India Limited versus Harisingh)", wherein, the Hon'ble Supreme Court has confirmed the award passed by the Labour Court while modifying the penalty by invoking Section 11-A of the Industrial Disputes Act, 1947 and held that before ordering dismissal, the authorities must explore the possibilities of imposing lesser penalty by taking into consideration the past services of the employee concerned.

g) "(2015) 12 SCC 39 (K.V.S.Ram versus Bangalore Metropolitan Transport Corporation)", wherein, the Hon'ble Supreme Court has held that the High Court can interfere with the award of the Tribunal/Labour Court when there is patent perversity and there is gross gross and manifest failure of justice or principles of natural justice have been floated. The Hon'ble Supreme Court, after adverting to the various decisions, has finally held that the discretion exercised by the Labour Court, did not warrant interference. The discussion and the final order passed by the Hon'ble Supreme Court as found in paragraphs 10 to 15 are extracted below:

"10. In the Writ Petition, while setting aside the award of the Labour Court, learned Single Judge placed reliance upon the judgment of this Court passed in the case of Punjab Water Supply Sewerage Board & Anr. vs. Ramsajivan & Anr., reported in 2007 (2) SCC (L&S) 668 = (2007) 9 SCC 86 and also another judgment of the High Court and observed that a person who practices fraud for securing employment cannot perpetuate on the ground of delay and the learned Single Judge faulted the Labour Court for exercising discretion under Section 11A of the Industrial Disputes Act and interfering with the punishment of dismissal from service. In our considered view, in exercise of its power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the Tribunal, only, when there has been a patent perversity in the orders of tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted. In our view, when the Labour Court has exercised its discretion keeping in view the facts of the case and the cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court.

"11. In Syed Yakoob vs. K.S. Radhakrishnan, AIR 1964 SC 477, the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939. Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479- 80, para 7)

"7. ...A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity

to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

(Emphasis supplied)

"12. In the case of Iswarlal Mohanlal Thakkar vs. Paschim Gujarat Vij Company Ltd. & Anr., (2004) 6 SCC 434, it was held as under:-

"15. We find the judgment and award of the labour court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227

of the Constitution of India to annul the findings of the labour court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

16. It is relevant to mention that in *Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329 with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that: (SCC p. 348)

"49. (m) ... The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court."

It was also held that: (SCC p. 347, para 49)

"49. (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it."

"13. Emphasizing that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution of India, Courts are to keep in

view the goals set out in the Preamble and in Part IV of the Constitution while construing social welfare legislations, in *Harjinder Singh vs. Punjab State Warehousing Corporation*, (2010) 3 SCC 192, this Court has held as under:

"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10. ...The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State. (*State of Mysore v. Workers of Gold Mines*, AIR 1958 SC 923 at page 928 para 10)"

"14. Once the Labour Court has exercised the discretion judicially, the High Court can interfere with the award, only if it is satisfied that the award of the Labour Court is vitiated by any fundamental flaws. We do not find that the award passed by the Labour Court suffers from any such flaws. While interfering with the award of the Labour Court, the High Court did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution of India and the impugned judgment cannot be sustained.

"15. In the result, the appeal is allowed and the impugned judgment passed by the High Court is set aside and the award passed by the Labour Court is restored. In the facts and

circumstances of the case, we make no order as to costs."

h) Judgment dated 24.3.2016 of this Court in W.A.No.425 of 2012 (The Managing Director versus S.Kalaiselvan)", wherein, the learned Division Bench has held in paragraphs 14 and 15:

"14. On the question as to whether the Labour Court can interfere with the finding of domestic enquiry even if the enquiry held is fair and proper, this Court in the case of Cork' Industries, Madras v. I.Addl. Labour Court & Ors. (1992-I-LLJ-384), has held that if the penalty imposed is disproportionate to the gravity of proved charges, the Labour Court can interfere with the quantum of punishment. Relevant portion of the said judgment is extracted hereunder:

"24. Considering the aforesaid contentions and the ratio of the authorities cited by both the counsel, it is clear that after the commencement of Section 11-A of the Act, the Labour Court is clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. The Labour Court is at liberty to consider not only whether the finding of misconduct recorded by the employer is correct, but also to differ from the said finding if a proper case is made out. It is the satisfaction of the Labour Court that finally decides the matter. The Labour Court has to consider the evidence and come to a conclusion one way or the other even in a case where an enquiry has been held by an employer and a finding of misconduct arrived at, the Labour Court can differ from that finding in a proper case and hold that no misconduct is proved. In view of the aforesaid position of law, it cannot be contended that the Labour Court cannot interfere with the finding of the domestic enquiry even if the enquiry is held to be fair and proper in so far as Category A workmen is concerned.

25. It is also well settled that

Sec. 11A of the Act confers powers on the Labour Court to evaluate the severity of misconduct. However when the finding of the Labour Court is based on appreciation of evidence and in the absence of any perversity in the finding, the High Court will not go into the question of adequacy or inadequacy of the material for interference with the findings of the Labour Court. ...''

"15. Law is well settled that when an employee is directed to be reinstated, he shall be put back in the same position and status as if the order of dismissal or discharge was never passed. In the case on hand, the Tribunal came to the conclusion that for the misconduct stated supra, the punishment of dismissal from service is harsh and interfered with the punishment and awarded reinstatement without backwages, continuity of service and other attendant benefits. The said award was not held to be perverse by the learned Single Judge. We find there are no reasons, much less sound reasons, put forth by the appellant/Management to interfere with the order passed by the learned Single Judge and hence, we find no merits. Accordingly, the Writ Appeal stands dismissed. No costs."

i) "2017 (3) L.L.N. 162 (Deport Manager, TSRTC versus Moh.Fakrudin and others)", wherein, the learned Division Bench of High Court of Andhra Pradesh held that interference by the Labour Court in the quantum of punishment by invoking Section 11-A of the Act, was not found to be perverse or unwarranted. Such award does not call for any interference by the High Court and confirmed the order of the Labour Court.

j) "2006 (2) CTC 470 (The Management of Asia Tobacco Co.Limited versus The Presiding Officer, Labour Court, Vellore)", wherein, even though the workman was charged for misconduct of theft, considering his past service, the Labour Court had interfered with the quantum of punishment and ordered reinstatement, the same was not interfered by the learned Bench of this Court, considering the family circumstances of the workman and other materials.

17. Mr.R.Arumugam, learned counsel appearing for the second respondent/workman would submit that the first respondent Labour Court has considered the unblemished record of past service of the second respondent/workman and also the fact that there was

no loss to the bank and no prejudice was caused to the interest of the bank and in such circumstances, the order of removal from service is as harsh and excessive, and accordingly, modified the same into one of stoppage of two increments with cumulative effect.

18. According to the learned counsel appearing for the second respondent/workman, the above decisions would squarely covered the issue in favour of the workman since the first respondent/Labour has exercised its jurisdiction vested in it under Section 11-A of the Act judicially and judiciously by giving acceptable reasons for its interference in the quantum of penalty. The reasoning given by the Labour Court cannot be construed as one of the perverse reasoning by any stretch of legal or factual standards in the facts and circumstances of the case and therefore, as rightly held by our High Court in various decisions cited supra, no interference is called for from this Court which is exercising its discretion under Article 226 of the Constitution of India.

19. This Court has given its anxious consideration to the rival submissions of the learned counsels appearing for both the petitioner/management and second respondent/workman and upon considering various legal principles cited by the learned counsel and upon perusing the materials and pleadings on record, is of the view that there appears to be some force in the contention put forth by the learned counsel appearing for the second respondent/workman. Although the learned counsel appearing for the petitioner/management has cited catena of decisions, stating that the Labour Court cannot invoke Section 11-A of the Act lightly on the basis of misplaced sympathy, yet it has to be seen that whether such power ultimately exercised by the Labour Court, is judicially acceptable or not?

20. In the instant case, the first respondent Labour Court has given its reasons as found in para 11 of its award. As explained above, it appears from the award, the Labour Court had taken into consideration the past services of the second respondent/workman and also the fact that there was no loss to the bank and no prejudice was caused to the bank by the act of misconduct by the second respondent/workman. In such event, the Labour Court was fully justified in interfering with the quantum of penalty. As held by the learned Division Bench of this Court, particularly, reported in "(2006) 1 M.L.J. 48 (RM.Palaniappan versus The Transport Commissioner, Chepauk, Chennai & others)" that extreme punishment of dismissal from service, found to be disproportionate for the reason that the main object and thrust behind awarding of punishment to an offender is only to mend the erred employee and not to strangulate him, otherwise the very purpose of awarding punishment would not be served.

21. When the authority exercising its power to impose penalty, should always take into consideration any mitigating circumstances in favour of the workman before imposing harsh penalty of removal from service. By imposing harsh penalty of removal from service, the authority is not only punishing the workman concerned, but also his family members who are dependents on the income of the employee. The punishment of removal from service, results in economic death for the workman concerned and therefore, the authorities have to be extremely cautious before imposing such penalty. Any act of misconduct even little serious, cannot straight away invite imposition of harsh penalty of dismissal or removal from service as such,

penalty would rob the employee of his entire livelihood which would have adverse impact on the family members.

22. In the light of the above scenario, the framers of the Industrial Disputes Act, have brought in and inserted Section 11-A vesting extraordinary power on the Labour Court/Tribunal for re-appreciating the evidence and also for interfering with the quantum of penalty even the charges which were held to be proved in the domestic enquiry or before it. As rightly enunciated by the various decisions cited on behalf of the workman, unless the interference by the Labour Court in the quantum of penalty which is found to be patently unjust, perverse and unreasonable, such discretion exercised by the Labour Court does not normally call for interference while exercising its judicial review of the award by this Court under Article 226 of the Constitution.

23. In the instant case, although charges were little serious and found to be proved, however, the same does not entail removal from service. Therefore, the Labour Court has rightly invoked its extraordinary jurisdiction by interfering with the quantum of penalty and substituted its own penalty. Such discretion exercised by the Labour Court, in the opinion of this Court, does not suffer from any infirmity in order to interfere with the same.

24. Although the learned counsel for the petitioner/management has relied upon several decisions as stated supra, on going through the same, this Court is of the view that those decisions cannot be of any help to the petitioner/management, as the ratio laid down in those cases, cannot be applied to the factual matrix of the present case. On the other hand, the decisions relied upon by the learned counsel for the second respondent/workman are far more relevant when applied to the factual matrix of the present case. Therefore, this Court accepts the contentions put forth by the learned

counsel for the second respondent/workman in regard to legal position while taking the decision in favour of the second respondent/workman.

25. In the light of the above discussion and narrative, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Suk

To
The Central Government Industrial Tribunal
cum Labour Court, Chennai
Block No.1 Sastry Bhavan Haddows Road
Chennai-34

copy to

The Record Keeper
ER Section
High Court Madras

+1 cc to M/s.R.Arumugam Advocate sr 71913
+1 cc to M/s.T.S.Gopalan Advocate sr 71325

W.P.No.16677 of 2004

aa31/10/2017

WEB COPY