IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.11.2017

Delivered on : 25.01.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.22895 of 2008

A.Thangavelu ... Petitioner

versus

1. Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
I Floor, B Wing, No.26,
Haddows Road,
Shastri Bhavan,
Chennai-600 006.

2. State Bank of India,
rep. by its Deputy General Manager,
Zonal Office,
Coimbatore. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the concerned records from the 1st respondent, quash the award dated 24.3.2008 passed by the 1st respondent in I.D.No.75 of 2006 and consequently substitute the same by directing the 2nd respondent to reinstate the petitioner in service with full back wages, continuity of service and all other attendant benefits.

For Petitioner : Mr.Balan Haridass

For Respondents: Mr.K.Sankaran for R2
R1-Tribunal

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ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the concerned records from the 1st respondent, quash the award dated 24.3.2008 passed

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by the 1st respondent in I.D.No.75 of 2006 and consequently substitute the same by directing the 2nd respondent to reinstate the petitioner in service with full back wages, continuity of service and all other attendant benefits."

2. The petitioner was working in the second respondent bank as Assistant (Accounts & Cash). According to the petitioner, he rendered unblemished service through out his career. While he was working as Assistant in Ganesapuram Branch of 2nd respondent bank, he was placed under suspension by order dated 23.10.2002. Thereafter, a charge memorandum was issued on 18.11.2002, framing two articles of charges. In response to the charge memorandum, an explanation was given by the petitioner dated 10.12.2002, denying the charges. However, not satisfied with the explanation, an enquiry was ordered and the petitioner participated in the enquiry. The enquiry report was submitted holding the charges proved against petitioner and on the basis of the said report, after affording an opportunity to the petitioner, a show cause notice was issued by the Disciplinary Authority on 10.11.2003 proposing the penalty of removal from service with superannuation benefits. Thereafter, final order of punishment removing the petitioner from service was passed, against which, an appeal was preferred on 9.2.2004, which came to be rejected by the proceedings dated 16.6.2004 by the appellate authority.

3. The first charge framed against the petitioner was relating to change of credit voucher on 9.10.2002 pertaining to one customer, Mr.Natarajan, bearing A/c.No.9/1605, which, according to the petitioner, by mistake amount was credited into the account of one Mr.Balasubramanian, A/c.No.1/20 and thereby, the petitioner defrauded the amount. The second charge was that the petitioner was in the habit of borrowing money from the customers of the Branch. According to the explanation of the petitioner, the entry was made mistakenly without any intention to defraud the amount and that he had not borrowed the money from the customers of the bank.

4. According to the petitioner, both the charges as framed were not established at all in the enquiry and notwithstanding the same, a report was submitted holding that the charges were proved. On the basis of flawed findings, the Disciplinary Authority imposed punishment of removal from service with superannuation benefits.

5. The petitioner would submit that the punishment although termed with the superannuation benefits was in fact, removal from service per se, since he had put in only less than 20 years and therefore, he was not entitled to any superannuation

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benefits in terms of the Pension Rules. According to the petitioner, without considering the infirmities pointed out in the conduct of the enquiry, the punishment order was passed by the Disciplinary Authority and also the Appellate Authority mechanically negatived the appeal.

6. In the above circumstances, the petitioner raised an industrial dispute questioning the punishment imposed on him and the dispute was referred for adjudication vide I.D.No.75 of 2006 before the first respondent Tribunal. The first respondent Tribunal, after adjudication of the dispute, passed an award dated 24.3.2008 in the above said I.D., upholding the order of punishment imposed on the petitioner by the second respondent bank. The said award is now put to challenge before this Court.

7. The learned counsel appearing for the petitioner at the outset would submit that without going into the various lacunae and infirmities in the conduct of the enquiry, he would place his arguments only on the proportionality of the punishment imposed on the petitioner, namely, removal from service with superannuation benefits. As stated earlier, removal order removing the petitioner with superannuation benefits has no real legal meaning as far as the petitioner is concerned since he had not completed requisite number of years of service to become eligible to claim superannuation benefits. Therefore, the order must be construed as simply removal from service without any benefits.

8. The learned counsel for the petitioner would submit that the petitioner had rendered unblemished service for over 17 years and the petitioner had given explanation for the first charge namely, discrepancy in the entries relating to the accounts of two customers which according to the petitioner, was done due to inadvertence and there was no intention behind such entries. As regards the second charge was concerned, there was no attempt by the petitioner to borrow money from the customers. The learned counsel also would submit that the persons who were cited as witnesses, namely, M.P.Balasubramanian and R.Natarajan, were not examined in the enquiry. As regards the second charge is concerned, according to the petitioner, the same was not supported by proper imputation since the charge does not disclose the names of the customers from whom, the petitioner had borrowed money. The allegation is extremely vague in nature and therefore, the same could not be established in unimpeachable terms in the enquiry.

9. According to the learned counsel for the petitioner that although the first respondent Tribunal accepted the legal contentions put forth by the petitioner, in regard to both the charges, nevertheless the Tribunal held in favour of the

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management. The learned counsel would draw the attention of this Court to paragraphs 6 to 8 of the award passed by the first respondent Tribunal which are extracted hereunder:

> "6. No doubt, I find some force in the contention of the learned counsel of the Petitioner but in this case the Respondent Bank has not only placed reliance on the complaint but also on its own records. In that records the connections were made by the petitioner. Even assuming for arguments sake that the petitioner has done a mistake without any intention to defraud the bank, the petitioner need not correct the records maintained by the bank without any enquiry. On that ground alone it is admitted by the petitioner himself that he has made the corrections in the records of the bank/ Further, no one can say changing the number from 9/1605 to A/c No.1/20 as a mistake because it cannot be said that this mistake had happened in the normal course of banking as pointed out by the Enquiry Officer and also by the Appellate Authority that the petitioner has wantonly done the correction and he has defrauded the bank and also defrauded the account holders. No doubt, the Respondent Bank has not examined the account holders and also the Investigating Officer but on this score it cannot be said in this case that the findings of the Enquiry Officer is perverse. The Enquiry Officer from the records has given a finding that the petitioner has wantonly done the corrections and he had defrauded the bank and also the customer. Under such circumstances, I am not inclined to accept the contention for the learned counsel for the Petitioner that the findings given by the Enquiry Officer is perverse.
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> 7. Then again the learned counsel for the Petitioner argued with regard to the second charge viz. That he was in the habit of borrowing money from the customers of the branch. The Respondent Bank has not produced any document or satisfactory evidence to substantiate this contention. No dobut, the Respondent Bank has examined two witnesses to prove this allegation. Both of them have not established this contention. One of the witnesses who was examined on the

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side of the Respondent Management though has given an evidence against the petitioner in the Chief Examination, he was not subjected to Cross-Examination and therefore no reliance can be placed on this evidence. The other witness who was examined though has given an evidence that he has given various amounts to the petitioner, he has not substantiated his claim as to when the petitioner has borrowed the amount nor what are the amounts he has paid to the petitioner. Therefore, with the vague inference being drawn from the evidence of the above witnsses, the Enquiry Officer has come to a conclusion that the two charges has been proved but really there is no basis to substantiate this charge also and therefore, the entire enquiry is vitiated.

8. Here again, I find some force in the contention of the learned counsel for the Petitioner but on consideration of the entire evidence in this case and on perusal of the documentary evidence produced in this case, the cumulative effect of all these will clearly establish that the petitioner has borrowed various amounts from the customers of the bank. Therefore, I am not inclined to accept the contention of this charge is without any basis, as such, I find the action of the Respondent Management in imposing the punishment of removal from service to the petitioner is legal and justified and I find this point against the petitioner."

10. The learned counsel pointed out that agreeing with the contentions put forth on behalf of the petitioner/employee, stating that there is some force in the contention, yet the Tribunal had decided against the petitioner. Moreover, while finally deciding the dispute, the Tribunal failed to apply Section 11(A) of the Industrial Disputes Act, 1947 in regard to quantum of penalty imposed on the petitioner, particularly by taking into consideration the unblemished record of service rendered by the petitioner before he was charge sheeted. In these circumstances, the learned counsel for the petitioner would implore this Court to apply the principles of proportionality in favour of the petitioner and interfere with the award passed by the first respondent Tribunal which is impugned in the writ petition.

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11. On the other hand, the learned counsel appearing for the second respondent bank would stoutly oppose any intervention by this Court on the quantum of penalty imposed on the petitioner as that would send a wrong signal to the other staff employees of the bank and such intervention would also go against larger public interest and against financial institution dealing with the customers. According to him, the first respondent Tribunal had correctly come to the conclusion against the petitioner and in favour of the bank and finally held that the punishment imposed on the petitioner is justified in the facts and circumstances. Since the award of the Tribunal is well founded on established principles of law and materials placed on record, the same does not call for interference from this Court, which is exercising writ jurisdiction of judicial review under Article 226 of the Constitution of India. According to the learned counsel, unless the findings of the Tribunal are perverse, no interference is called for from this Court. Both the learned counsel appearing for the employer and the management have relied upon the decisions of this Court and the Hon'ble Supreme Court in order to prove their respective points.

12. The learned counsel for the petitioner has relied upon the following decisions in support of his submissions.

i) 1981 (1) LLJ 137 "(Gujarat Steel Tubes Ltd versus Gujarat Steel Tubes Mazdoor Sabha)". The learned counsel would draw the attention of this Court to paragraphs 79 and 80 of the judgment, which are extracted hereunder:

> "79. Dual jurisdictional issues arise here which have been argued at some length before us. The position taken up by Sri Sen was that the High Court could not, under Article 226, direct reinstatement, and even it felt that the arbitrator had gone wrong in refusing reinstatement, the court could only demolish the order and direct the arbitrator to reconsider the issue. What belonged, as a discretionary power, to a tribunal or other adjudicatory body could not be wrested by the writ court. To put it pithily, regarding the relief of reinstatement, the arbitrator could but would not and the High Court would but could not. (We will deal later with the point that the arbitrator had himself no power under Section 11 A of the Act but did have it in view of the wide terms of reference.)
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> "80. The basis of this submission as we conceive it. is the traditional limitations

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> woven around high prerogative writs. Without examining the correctness of this limitation, we disregard it because while Article 226 has been inspired by the royal writs its sweep and scope exceed hide-bound British processes of yore. We are what we are because our Constitution-framers have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our conditions. Heritage cannot hamstring; nor custom constrict where the language used is wisely wide. The British paradigms are not necessarily models in the Indian Republic. So broad are the expressive expressions designedly used in Article 226 that any order which should have been made by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle, except where gross injustice or fatal illegality and the like are present inhibit the exercise but do not abolish the power."

According to the learned counsel, the Writ Court has the power which is exercisable by the lower authority including the power of the Tribunal under Section 11-A of the Industrial Disputes Act. Therefore, he would urge this Court that the Tribunal failed to exercise its power and such power can be exercised by this Court under 226 of the Constitution of India.

ii) 1983 (2) LLJ 232 "(Workmen, employed in Engine Valves Limited versus Engine Valves Limited)", wherein, the Division Bench has held in para 13 as follows:

> "13. This Court considers that, when S. 11A had been incorporated with effect from 15th December, 1971, a Labour Court functioning under Act, is bound to apply such amendments which are carried out from time to time, irrespective of any plea raised pertaining to its jurisdiction. As pointed out in the decisions above referred subsequent to introduction of S. 11A when a jurisdiction had been conferred on the Tribunal to satisfy itself about the correctness of the finding of misconduct, the Labour Court failed to exercise the jurisdiction enjoined upon it under the provisions of the Act. It is not for a workman to plead an incidental and consequential relief, which is made

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available to him by statute, and no management can be heard to plead that a statutory benefit should not be extended to an affected workman. Unless, as pointed out in Workmen of Firestone Tyre and Rubber Company v. Management (supra), the Tribunal satisfies itself about the correctness of the finding, its award would be illegal. Hence, this Court holds that a Labour Court suo motu has to apply S. 11A, irrespective of whether a workman had mentioned the said section or nor, and pleaded for relief thereunder or not."

As per the above decision, irrespective of the pleading, it is the duty of the Tribunal/Labour Court to consider the scope of the Section 11(A) of the Act and its application in any given case. In the instant case, the learned counsel would point out that there was no consideration of application of Section 11(A) of the Act on the proportionality of the punishment imposed on the petitioner. Therefore, he would submit that the award is vitiated on the ground that the Tribunal had not applied Section 11(A) of the ID Act.

iii) 1987 (4) SCC 611 (Ranjit Thakur versus Union of India and others). The learned counsel would draw the attention of this Court to para 25 of the judgment, which is extracted below:

"25. 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 A 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 B logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 Weekly Law

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Reports 1174 (HL) Lord Deplock said:

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

Relying upon the above, the learned counsel would submit that the punishment should not be vindictive, unduly harsh or disproportionate to the offence which by itself is a conclusive fact of biased mindset. As per the above judgment, the doctrine of proportionality is a part of the judicial review.

iv) 1995 (6) SCC 749 "(B.C.Chaturvedi versus Union of India and others)". The learned counsel would draw the attention of this Court to paragraphs 18, 23 and 25 of the judgment, which are extracted as under:

> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. It the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould

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the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof.

"19. to 22. ....

"23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh's case, AIR 1963 SC 1909, that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. of course, this power is not as wide which this Court has under Article 142. That, however, is a different matter."

"24. ....

"25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the

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prevalence of unfair labour practice or victimization by the management. Even so, the power under section 11A is available to be exercised, even if there be no victimization or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate."

In the above famous judgment, the Hon'ble Supreme Court has held that the Court/Tribunal has power of judicial review in interfering with the quantum of penalty, but that exercise has to be exercised judiciously and in exceptional cases.

v) 2000(7) SCC 522 (Shama Prasant Raje versus Ganaptrao and others), wherein, the Hon'ble Supreme Court has held in para 5 as under:

"5. In view of the rival submissions we have carefully scrutinized the orders of the Controller, that of the Appellate Authority under the Control Order and the order of the learned Single Judge which has been affirmed by the Division Bench. Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the

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High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by mis-construing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal. Then again the two questions on which the Tribunal under the Rent Control Order were required to give finding, namely, habitual defaulter and subletting are not pure questions of fact but can be held to be mixed questions of fact and law. In this view of the matter, on going through the Appellate order passed by the District Collector as well as the order of the learned Single Judge, we are not in a position to hold that the High Court exceeded the parameters prescribed for interference with the findings of an inferior Tribunal. Under Clause 13(3) (ii) Controller has to be satisfied that the tenant is habitually in errors with the rent. The expression habitually would obviously connote some act of continuity. Under the Lease Deed dated 8.4.1982 between the landlord and the tenant Clause 4 made it obligatory for the tenant to pay the rent before 10th day of each English Calendar month, and under Clause 9 in the event of arrears of rent over 3 months is not paid then the landlord was entitled to give notice and then if the matter is not settled within one month from the date of the notice then the landlord is entitled to terminate

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the tenancy. Reading the aforesaid two Clauses it would not be correct, as contended by Mr. Verma, learned senior counsel appearing for the appellant, that under the agreement itself 4 months period has been provided to enable the tenant to pay the rent. If a tenant, notwithstanding the obligation of paying the rent by 10th day of each English calendar month continuously makes a default of paying the rent for the first month by two months thereafter, and pays the rent in similar manner, then he must be held to be habitually in arrear with the rent in question. This being the position, the fact that the rent for September to November 1984 was paid in December only after the Distress Warrant was issued and that again from December 1984 to March 1985 the rent had not been paid and were deposited within the 10th of next month, as stipulated in the lease agreement would constitute the tenant to be habitually in arrear within the meaning of Section 13(3) (ii) of the Control Order. The Appellate Authority under the Control Order was obviously in error in interfering with the well reasoned conclusion of the Controller on this score, and the High Court was fully justified in correcting the said error by interfering with the finding of the lower Appellate Authority on the question of applicability of Section 13(3) (ii) to the case in hand. Similarly, on the question of subletting, there is no dispute with the proposition that the two ingredients; namely, parting with the possession and some consideration therefor, had to be established. The conclusion of the lower Appellate Authority on this score was obviously on a mis-construction of the document Exhibit N2 and the High Court, therefore, was entitled to correct the error which was based upon a construction of the aforesaid document. The different Clauses of the lease deed unequivocally indicates that the sum of Rs.1,500/- p.m. was the consideration money for parting with the possession of the premises and allowing the Singer Sewing Machine to do business in the premises."

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The Hon'ble Supreme Court held that in certain situations, the High Court, exercising jurisdiction under Article 226, can interfere with the findings of the lower Court while exercising its supervisory and appellate jurisdiction.

vi) (2008) 12 SCC 331 "(Man Singh versus State of Haryana and others)". The learned counsel would draw the attention of this Court to para 20 of the judgment, which is extracted below:

> "20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness."

According to the learned counsel, any administrative action shall be just, fair and reasonable. In this case, the action by the respondent bank is opposite to the said concept and therefore, calls for interference.

vii) 2009 (4) LLN 350 "(K.Ramalingam versus The Superintendent of Police Perabalur)". The learned counsel for the petitioner has relied upon para 9 of the order passed by the learned single Judge (as he then was) of this Court, which is extracted below:

> "9. Whether the statements made during the preliminary enquiry, not corroborated by cross examination can be validly relied on by the Disciplinary authority, was considered by the Honourable Supreme Court in the decision reported in (2004) 10 SCC 87

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(Union of India v. Mohammed Ibrahim). The Hon'ble Supreme Court held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons, examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal, which was upheld by the High court and there is no error in the order setting aside the dismissal order. "

According to the learned counsel, the present order of removal from service was passed without examining the crucial witnesses. Therefore, the entire finding is vitiated. This submission was made by the learned counsel in order to support his overall submissions, calling upon this Court to interfere with the quantum of penalty which was ultimately imposed on the petitioner.

viii) (2006)1 MLJ 48 (RM.Palaniappan Vs. The Transport Commissioner, Chepauk, Chennai and others). The learned counsel would draw the attention of this Court to paragraph 26 of the above judgment. The same is extracted below:-

26. No doubt, the shameful act committed by the petitioner is so serious in nature. However, the extreme punishment of dismissal from service imposed on the petitioner, in our view, is disproportionate for the reason that the main object and thrust behind awarding of a punishment to an offender is only to mend him and not to strangulate. Otherwise, the very purpose of awarding punishment would not be served.

ix) 2014 (10) SCC 301 (Raghubir Singh versus General Manager, Haryana Roadways, Hissar). The learned counsel would rely upon paragraphs 34 and 36 of the judgment, which are reproduced herein below:

"34. The rejection of the reference by the Labour Court by answering the additional issue no. 2 regarding the delay latches and limitation without adjudicating the points of dispute referred to it on the merits amounts to failure to exercise its statutory power under Section 11A of the Act. Therefore, we have to interfere with the impugned award of the Labour Court and the judgment & order of the High Court as it has erroneously confirmed the award of the

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Labour Court without examining the relevant provisions of the Act and decisions of this Court referred to supra on the relevant issue regarding the limitation."

"35. ...."

"36. Once the reference is made by the State Government in exercise of its statutory power to the Labour Court for adjudication of the existing industrial dispute on the points of dispute, it is the mandatory statutory duty of the Labour Court under Section 11A of the Act to adjudicate the dispute on merits on the basis of evidence produced on record. Section 11A was inserted to the Act by the Parliament by the Amendment Act 45 of 1971 (w.e.f. 15.12.1972) with the avowed object to examine the important aspect of proportionality of punishment imposed upon a workman if, the acts of misconduct alleged against workman are proved. The "Doctrine of Proportionality" has been elaborately discussed by this Court by interpreting the above provision in the case of Workmen of Messrs Firestone Tyre & Rubber Company of India v. Management & Ors.[11] as under:-

> "33. The question is whether section 11A has made any changes in the legal position mentioned above and if so, to what extent? The Statement of objects and reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what the Legislature wanted to achieve. At the time of introducing section 11A in the Act, the legislature must have been aware of the several principles laid down in the various decisions of this Court referred to above. The object is stated to be that the, Tribunal should have power in cases, where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment. The Statement of objects and reasons has specifically referred to the limitation on the powers of an Industrial Tribunal, as laid, down by

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this Court in Indian Iron & Steel Co. Ltd. V. Their Workmen (AIR 1958 SC130 at P.138).

"34. This will be a convenient stage to consider the contents of section 11A. To invoke section 11A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the, order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the work-man including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence."

Thus, we believe that the Labour Court and the High Court have failed in not adjudicating the dispute on merits and also in not discharging their statutory duty in exercise of their power vested under Section 11A of the Act and therefore, the impugned judgment, order and award are contrary to the provisions of the Act and law laid down by this Court in the above case."

As per the above decision, failure to discharge the statutory duty and power vested under Section 11-A of the Act, is contrary to the provisions of the Act and law laid down by the Hon'ble Supreme Court. The learned counsel would submit that in this case also, the first respondent Tribunal has failed to exercise its jurisdiction under Section 11(A) of the Act as the award itself does not disclose whether there was any such consideration on the part of the Tribunal. Therefore, he would submit that on this ground also, the order is required to be set aside.

x) Unreported decision of this Court in W.P.No.21129 of 2015 dated 28.03.2017, wherein, the Division Bench of this Court has interfered with the quantum of penalty of removal from

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service and replaced the same with reduction of pay with minimum pay scale on the ground of proportionality. The operative portion of the judgment, wherein, the Division Bench of this Court has modified the quantum of penalty, as found in paragraphs 10 and 11, is extracted herein below:

> "10. We are of the considered view that the imposition of penalty of removal from service vide proceedings dated 28.01.2011 is too harsh in the circumstances of the case to be sustained. Therefore, We deem it fit to replace the penalty of removal from service into one of reduction of pay of the petitioner to the minimum of the pay scale and the said punishment shall come into effect from the date of imposition of the order of removal from service. We also make it clear that the petitioner is not entitled to arrears of pay and allowances from the date of imposition of penalty to the date of implementation of our order on the principle of ''no work, no pay''. The pay of the petitioner has to be notionally fixed during the said period. Thereafter the petitioner would be entitled to earn the annual increments as admissible to him. "11. In view of the above modification of the penalty, We set aside the impugned orders, which were part of the Original Applications and also set aside the order of the learned Tribunal passed in O.A.No.1092 of 2012 dated 18.03.2015 only to the extent of upholding by the learned Tribunal of the punishment of removal from service is concerned."

xi) 2017 (4) SCC P 507 "(Central Industrial Security Force and others versus Abrar Ali)", wherein, the Hon'ble Supreme Court has held in para 19 as under:

> "19. Though we are of the view that the High Court ought not to have interfered with the order passed by the Disciplinary Authority, the penalty of dismissal from service is not commensurate with delinquency. The Respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view,

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> the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the Appellants that the Respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that the Respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period."

In this case also, although the punishment was held to be proper, yet, the Hon'ble Supreme Court thought fit to interfere with the quantum of penalty and ultimately imposed the penalty of compulsory retirement which would make the delinquent eligible to get pensionary benefits.

13. Per contra, the learned counsel appearing for the second respondent management would rely on the following decisions, viz.,

i) (1998) 4 SCC 310 (Union Bank of India versus Vishwa Mohan), wherein, the Hon'ble Supreme Court has held in para 12 which is extracted as under:

> "12. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non supply of the Inquiry Authority's report/findings in the present case. It needs to be emphasized that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non furnishing of the inquiry report/findings to him."

In the above said judgment, the Hon'ble Supreme Court emphasized that in banking business, absolute devotion,

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diligence, integrity and honesty need to be preserved by every bank employee and it set aside the order of the High Court which interfered with the quantum of punishment of dismissal from service.

ii) 2005 (10) SCC 84 (Damoh Panna Sagar Rural Regional Bank and another versus Munnalal Jain)". The learned counsel would draw the attention of this Court to paragraphs 6 and 12 to 17, which are extracted as under:

> "6. The High Court observed that ordinarily the High Court should not interfere with the order of learned Single Judge. It, however, noticed that the amount has been repaid with 24% interest. It was observed that though adequate material was not placed to establish the wife's illness that could not be a ground to uphold the punishment of removal, particularly when he had paid back the amount with 24% interest. There was no allegation that earlier he had committed any kind of delinquency. It was noted that antecedents do not play positive role in all cases, but in certain cases they cannot be totally ignored. Reference was made to decision of this Court in Kailash Nath Gupta v. Enquiry Officer (R.K. Rai) Allahabad Bank and others(AIR 2003 SC 1377). It was also observed that in the said case this Court has taken note of the fact that a sum of Rs.46,000/-has already been repaid and no loss was caused to the bank. Though factual matrix was noticed to be different, yet it was held that the Branch Manager in a difficult situation had withdrawn the money and repaid with 24% interest. There was no loss caused. Again the High Court observed that it hastened to add that it was not its view that unless there is any loss there cannot be any misconduct. Ultimately it was concluded that this was a fit case where the Board should be compassionate and gracious enough to reconsider employee's case to pass any other punishment other than dismissal, removal or termination. It was held that there was irregularity but not such an irregularity as to attract the punishment of removal. It was also indicated that even if lesser punishment is awarded the employee would not be entitled to any kind of back wages.
>
> "7 to 11. ...."

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"12. In B.C. Chaturvedi v. Union of India and Ors. (1995 [6] SCC 749) it was observed:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

"13. In Union of India and Anr. v. G. Ganayutham (1997 [7] SCC 463), this Court summed up the position relating to proportionality in paragraphs 31 and 32, which read as follows:

"The current position of proportionality in administrative law in England and India can be summarized as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was

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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 (1948 1 KB 223) 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 (1985 AC 374) principles.

(3)(a) As per Bugdaycay (1987 AC 514), Brind (1991 (1) AC 696) and Smith (1996 (1) All ER 257) 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

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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.

Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain "Ranjit Thakur (1987 [4] SCC 611)".

"14. 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.

"15. To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks

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

"16. 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.

"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."

The learned counsel for the bank would emphasize that unless the punishment is shocking the conscience, the same cannot be interfered with by this Court by adopting casual approach in interfering with the quantum of punishment.

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iii) 2006 (5) SCC 137 "(North-Eastern Karnataka Rt.Corporation versus Ashappa)". The learned counsel would draw the attention of this Court to paragraphs 7, 10 to 12. According to the learned counsel for the second respondent, the Hon'ble Supreme Court has dealt with the issue of quantum of penalty in detail and held that maintenance of discipline of an institution is equally important and therefore, the punishment from service imposed on the employee was found to be proportionate.

> "7. The charges against the Respondent were proved. Even the Labour Court, before whom the parties adduced evidences, found that the Respondent was absent for over three years. The Labour Court, however, proceeded on the basis that over-staying on leave or absence from duty partook to the nature of a minor offence.
>
> "8 & 9.
>
> "10. Yet recently in State of U.P. v. Sheo Shanker Lal Srivastava and Others [(2006) 3 SCC 276], it was opined that the Industrial Courts or the High Courts would not normally interfere with the quantum of punishment imposed upon by the Respondent stating:
>
> > "It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."
>
> "11. The said principle of law has been reiterated in A. Sudharkar.v. Post Master General, Hyderabad and Anr.[2006 (3) SCALE 524] stating:
>
> > "Contention of Dr. Pillai relating to quantum of punishment cannot be accepted, having regard to the fact that temporary defalcation of any amount itself was sufficient for the disciplinary authority to impose the punishment of compulsory retirement upon the Appellant and in that view of

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the matter, the question that the third charge had been partially proved takes a back seat.

In Hombe Gowda Educational Trust and Another v. State of Karnataka and Others [(2006) 1 SCC 430], this Bench opined:

> "The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.
>
> This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.
>
> Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as shock one's conscience.
>
> A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to

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be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court."

"12. In State of Rajasthan and Another v. Mohd. Ayub Naz [(2006) 1 SCC 589], this Court held:

"For the foregoing reasons, we are of the opinion that a government servant who has willfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court, has no right to receive the monetary/ retrial benefits during the period in question. The High Court has given all retrial benefits which shall mean that a lump sum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was willfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent"

iv) (2006) 13 SCC 619 "(Kerala Solvent Extractions Ltd. versus A.Unnikrishnan and another)". The learned counsel would rely on the observations made by the Hon'ble Supreme Court as found in para 10 which is extracted below.

"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

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> 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."

According to the learned counsel, there cannot be misplaced sympathy at the expense of legitimacy of the judicial process. Therefore, he would contend that in the present case, such mistaken sympathy need not be shown when the charge framed against the petitioner was very serious in nature.

v) (2006) 13 SCC 1 "(Government of India and another versus George Philip and another)". The learned counsel would draw the attention of this Court to paragraph 11 wherein, the Hon'ble Supreme Court extracted a portion of the judgment found in para 18 in "B.C.Chaturvedi versus Union of India" (cited supra), which reads as under:

> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. It the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof."

According to the learned counsel, the High Court or the Tribunal, while exercising judicial review, cannot normally

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substitute its own conclusion on penalty and impose some other penalty, but it is only in the rarest of rare cases where it shocks conscience of the Court. He would submit that in the present case, the punishment cannot be even remotely said that the same is shocking the conscience of the Court.

vi) 2015 (4) LLJ 1 "(U.P.State Road Transport Corporation and others versus Gopal Shukla and others)". As far as this case is concerned, the Hon'ble Supreme Court has restored the order of dismissal from service which was inflicted against an employee who was involved in embezzlement of money, which dismissal order was interfered with by the Tribunal and the High Court.

vii) (1994) 1 SCC 541 "(Management of Reserve Bank of India, New Delhi versus Bhopal Singh Panchal)". The learned counsel would draw the attention of this Court to paragraphs 6 and 15. However, these paragraphs need not be reproduced for the simple reason that they dealt with the order of dismissal from service of the employee concerned, the ratio laid down under the said decision would not apply whatsoever to the factual matrix of the present case and the facts are also completely different.

viii) 2007 (3) LLJ 425 "(Vipin Kalia and others versus State Bank of India and others)". The learned counsel would draw the attention of this Court to paragraph No.12 which is reproduced below:

> "12. The State Bank of India, as already stated, has its own pension regulations. The employees of the State Bank of India are bound by the same. Letter/circular dated 11th December, 2000 refers to amendment to Bank (Employees') Pension Regulations, 1995. The said regulations are not applicable to the employees of State Bank of India. The Pension regulations applicable to the State Bank of India employees are different. As far as employees of State Bank of India are concerned, the Bank Employees' Pension Regulations, 1995 are not applicable. The amendment suggested by letter/circular dated 11th December, 2000 by Indian Bank's Association was not applicable to the appellants and the employees of the State Bank of India. We may also point out here that State Bank of India in the counter affidavit has explained that its Voluntary Retirement Scheme was a special and a

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distinct scheme offering a handsome package for the employees who were ready and willing to opt for retirement. It is also pointed out that the State Bank of India's employees unlike employees belonging to other public sector banks were entitled to both contributory provident fund and membership of a pension fund. It is stated that employees of other public sector bank are eligible either for contributory provident fund or membership of pension fund. "

This judgment relates to the same management herein. According to the judgment of the Division Bench, that once pension is regulated, the same cannot be altered in terms of their own regulations and not covered by the Pension Regulations applicable to other branch. However, this decision may not have strict bearing on the issues and the contentions raised on behalf of the respondents.

14. This Court has considered the settled legal principles on the issue of proportionality of punishment which were applied in very many cases as cited by the respective learned counsels. Since the proportionality or otherwise has to be decided on the basis of factual matrix of each case, this Court is called upon to take call on the basis of facts and circumstances of the present case. At the same time, this Court cannot brush aside the legal principles evolved over the years by the Courts, namely, High Courts and Hon'ble Supreme Court of India. In the catena of decisions which were cited by the learned counsels for the parties, what emerges is that the Court has the power to interfere with the quantum of penalty under exceptional circumstances where the Court is of the view that administration of justice is better served.

15. As discussed above, the petitioner herein had served the bank for about 17 years without any blemish which fact has not been disputed by the bank. Moreover, the learned counsel for the petitioner has pointed out certain infirmities in the findings of the enquiry, particularly, in view of the non-examination of crucial witnesses, namely, the customers of the bank, Shri Natarajan and Shri Balasubramanian whose accounts were allegedly found to be tampered with by the petitioner. Further, there was no mention in the imputation of charges about the names of the customers from whom, the petitioner had borrowed money. In fact, the Tribunal has observed in categorical terms that the legal contentions in respect of both the charges made on behalf of the petitioner workmen had some force, at the same time, the Tribunal concluded against the petitioner on the basis of its own reasoning overlooking its

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observations. Therefore, this Court is of the view that there is merit in the contentions put forth by the learned counsel for the petitioner. The Tribunal has side stepped its own observation made in favour of the petitioner and proceeded to hold against the petitioner in passing the final award. Moreover, the award as such, does not disclose whether the Tribunal has considered the application of Section 11-A of the Industrial Disputes Act, particularly, in regard to the proportionality of the punishment imposed on the petitioner.

16. This was more so, when the removal from service with superannuation benefits did not have any legal meaning as far as the petitioner is concerned, since he has not qualified for being paid superannuation benefits in terms of the regulations of the second respondent bank. Therefore, the punishment which was imposed on the petitioner was only a removal from service without any benefits.

17. Even otherwise, the first respondent Tribunal ought to have considered the extenuating circumstances in favour of the petitioner while coming to a finding other than the finding rendered in the domestic enquiry by relying upon Section 11-A of the Act. No such exercise has been undertaken by the Tribunal and has merely endorsed the enquiry findings regardless of lacunae and infirmities pointed out by the petitioner. More over, the approach of the Industrial Tribunal is not in consonance with the legally established principles particularly, with reference to Section 11-A of the Act and therefore, the award passed by the Tribunal has to be necessarily interfered with. Moreover, this Court has to see that although two sets of decisions were cited by the respective counsels, this Court has to ultimately see what is equitable and fair balancing between the right of the petitioner and the interest of the public organization.

18. In fact, the Hon'ble Supreme Court has held that in case of quantum of penalty, there should be compelling and strong circumstances which must be recorded and such interference cannot be on the basis of misplaced sympathy and generosity. Considering the said concept of rendering justice, this Court has no hesitation to hold as far as the present case on hand is concerned, that interference is called for, which is not based on misplaced sympathy or generosity, but on the basis of rendering equitable justice which is a hallmark of judicial review by this Court which is exercising its constitutional jurisdiction under Article 226 of the Constitution of India.

19. This Court as stated above, has to take into consideration the interest of both the employee and the management while administering justice without being unduly influenced by any sympathetic consideration. On the basis of

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over all facts and circumstances as discussed and narrated above, this Court is of the considered view that there must be fair play in all administrative decisions, particularly in the matter of imposing punishment, when it takes away the very livelihood of the employee, which is not only going to affect him, but also affect his family members. Therefore, great care is required to be taken by the authorities and the Tribunal which is vested with the statutory duties to administer justice by applying the settled principles, this Court has no other option, but to conclude that the order of removal from service which has been upheld by the award of the Tribunal, has to be necessarily interfered with. Therefore, the impugned award dated 24.3.2008 is hereby quashed.

20. As held by the Hon'ble Supreme Court in the decision reported in 1981 (1) LLJ 137 "(Gujarat Steel Tubes Ltd versus Gujarat Steel Tubes Mazdoor Sabha), in exceptional circumstances of the present case, there is no need to send back the matter for fresh consideration to the first respondent Tribunal under Section 11-A of the Industrial Disputes Act in regard to proportionality of the punishment, particularly in view of the passage of considerable time that had taken place during pendency of the litigation before this Court. In such view of the matter, this Court directs the second respondent Management to pass orders, reinstating the petitioner workman into service forthwith. Although some infirmities pointed out in the conduct of the enquiry, this Court is ofcourse of the view that there was negligence on the part of the petitioner in discharging his duties and therefore, the same would attract some penalty. In order to uphold the discipline of the institution, the second respondent is directed to impose a penalty other than dismissal, removal or compulsory retirement from service. On such modified penalty being imposed by the second respondent/management, the petitioner is entitled to all other consequential benefits arising thereof. The second respondent/management shall comply with the directions within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. No costs.

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Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Presiding Officer,
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+1cc to Mr.Balan Haridas, Advocate SR.No.5889
+1cc to Mr.Sankaran, Advocate SR.No.5786.

W.P.No.22895 of 2008

GMR(CO)
GN(14/02/2018)

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