

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33610 of 2013

M/s.Hindustan Unilever Ltd.,
Tea Factory Manager
Puducherry - 605 102

..Petitioner

vs

1. The Presiding Officer,
Labour Court,
Puducherry.

2. S.Raja

..Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected with I.D.No.03 of 2011 and Award dated 15.05.2013 passed therein by the 1st Respondent i.e., The Presiding Officer, Labour Court, Puducherry and quash the same.

For Petitioner : Mr.R.Sanjay Mohan

For M/s.S.Ramasubramaniam & Associates

For Respondents : Mr.P.R.Thiruneelakandan for R2

O R D E R

Challenging the Award dated 15th May 2013 passed in I.D.No.03 of 2011, the present writ petition is filed.

2. The petitioner is a Company engaged in the business of manufacturing and marketing of Fast Moving Consumer Goods(FMCG). The petitioner's factory is at Puducherry and started in the year 1997 and 129 workmen, 5 staff, 10 officers and 3 managers are working in the petitioner's factory. The 2nd respondent workman joined in the factory during the year 1999 and he was the General Secretary of the Union, when he was terminated from service. On 29.07.2009, when the 2nd respondent workman was not on duty at around 1.00 p.m, came to the factory in his own accord to meet the H.R Executive. He was permitted to meet H.R

Executive only in her cabin. When he was sitting in H.R Executive cabin, he enquired about the meeting in the shop floor and abruptly left the place and barged into the shop floor. In the shop floor, the Production Manager and the other Executives were having meeting. The 2nd respondent disrupted the meeting, started using abusive language against the Executives and the Managers. He also hold the executive by name Mr.Sundaram, by his shirt collar and created an atmosphere of panic. In view of the unruly behaviour of the 2nd respondent workman, a charge sheet was issued and he was placed under suspension. The 2nd respondent workman refused to receive the order of suspension and also refused to leave the factory. He further instigated the other employees and they have also refused to leave the factory and he instigated the workers to stop the entire work in the factory. Once again on 30.07.2009, the 2nd respondent along with few other workers, disrupted and gheraoed the executives. A charge sheet dated 03.08.2009 was issued to the 2nd respondent. The domestic enquiry was conducted by the petitioner Company and the 2nd respondent was found guilty. Consequently, he was dismissed from service, after following the procedures. The 2nd respondent raised an Industrial Dispute in I.D.No.03 of 2011. The Labour Court found that the enquiry was fair and proper. Further, it was found that the charge of misconduct has been made out. However, the Labour Court interfered with the punishment and directed reinstatement with back wages and imposed one increment cut alone as punishment. Challenging the said award, the present writ petition is filed.

3. The learned counsel appearing on behalf of the writ petitioner seriously contended that the charges against the employee were serious in nature involving

(i) hurling abusive language against his immediate Superior/Executive, who was in-charge of supervision of 120 workmen (along with a few other supervisors depending upon which shift they came in)

and
(ii) assaulting the same Executive by grabbing him by collar front of the shirt.

4. The learned counsel reiterated that the Labour Court found that the employee is guilty of these two misconducts. However, the Labour Court without any jurisdiction or valid reason, interfered with the quantum of punishment of dismissal and modified the punishment into one of increment cut, further ordered for reinstatement with back wages and continuity of service.

5. The learned counsel is of an opinion that under Section 11-A of the Industrial Disputes Act, the Labour Court can

interfere with the punishment. However, the jurisdiction vested in the Labour Court requires the Labour Court to give reasons for interference with the punishment other than simply say that the punishment of dismissal is too severe. As far as the impugned Award is concerned, except by stating that the punishment of dismissal is severe, no acceptable reason has been furnished for the modification of punishment by invoking the powers under Section 11-A of the Industrial Disputes Act. Thus, there is an error of jurisdiction in the Award and Labour Court has exceeded its jurisdiction under Section 11-A by interfering with the punishment without giving any reason.

6. It is contended that the punishments are imposed as a penalty upon a wrong doer and to enforce discipline, so that others can understand that the discipline is of paramount importance inside the factory premises. However, these parameters have not been kept in mind at the time of modifying the punishment from dismissal to cut in increment.

7. It is contended that in today's times of violence, the Award of the Labour Court is not in touch with reality and the extreme need that is available in day-to-day life to put down violent and indecent behaviour that has crept into all walks of life and that occurs at the drop of the hat. The Award fails to look at the realistic ground situation in a factory shop floor. In the factory of the Petitioner, there are about 120 workmen in the "workman" category involving manufacturing activities. These workmen are supervised by only a handful of Superiors such as the abused executives/supervisors. The Executive, who was abused and assaulted when his shirt was grabbed by the dismissed employee was the difficult jobs and they need protection at the hands of the Labour Court, if not at the hands of the employer. While looking at the nature of misconduct and the punishment involved, the Labour Court ought to have exercised jurisdiction vested in it by Section 11-A by visualizing the impact of the misconduct upon the Executive concerned. Section 11-A requires a balanced approach in the interference of punishment by looking not only from the point of view of the dismissed workman but also from the point of view of the assaulted Superiors, as he is not covered by the Industrial Disputes Act nor he has the protection of any Union to support, as he is not a "workman". Therefore, there were all the more important reasons available for the Labour Court to view the punishment perceptively and its probability from the impact to reinstatement upon all the Superior / Executives.

8. The abused and assaulted Executive also has a family and is a breadwinner and has come to the factory to earn his livelihood and not to be abused or beaten. Where a person in the "workman" category who indulges in this kind of activity

deserves to be reinstated is an aspect that the Labour Court should look at and the Labour Court is duty bound to examine under Section 11-A and failure to do that has rendered the Award in excess of jurisdiction. Even in the past, the very same workman had indulged in violent behaviour that too during the period of probation. Such a person does not deserve reinstatement in the submission of the Petitioner.

9. In this regard, the learned counsel for the petitioner cited the following judgments.

10. In the case of Mahendra Nissan Allwyns Ltd., Vs. M.P.Sidappa & Ors, in C.A.No.5750/1998, decided on 13.11.1998, the Hon'ble Supreme Court of India held as follows:

"4. We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factory premises regardless of the challenge by the security guard. Along with these workmen the first respondent entered the administrative building of the appellant and the room of the Deputy General Manager. The Deputy General Manager and Manager (Personnel) were abused in filthy language and threatened, examples of which have been given. Misbehaviour was also proved against the first respondent in his conduct with five executives of the appellants. If these are not serious charges against a workman worthy of his dismissal from service, we do not know what can be. The High Court was quite wrong in the conclusion that it reached and in the order that it passed. The punishment imposed against the respondent must remain unaltered."

11. In the case of New Shorrock Mills Vs. Maheshbhai T.Rao, in Civil Appeal No.1959 of 1992, decided on 25.10.1996, the Apex Court held as follows:

"9. It appears to us that the Labour Court completely misdirected itself in ordering the respondent's reinstatement with forty per cent back wages. The Labour Court was exercising jurisdiction under Section 78 of the Bombay Industrial Relations Act, 1946. It had the jurisdiction, inter alia, to decide the disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the Standing Orders. The Labour Court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, the respondent's order of discharge was not by way of victimisation and that the

respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions and had been punished. According to the appellant there were at least three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time. Another aspect which was overlooked by the Labour Court was that on the finding of the Inquiry Officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed the respondent from service. The appellant chose not to do so. Instead it passed an order of discharging the respondent from service. Lesser punishment having been given by the management itself there was, in our opinion, no justifiable reason for the Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent back wages was clearly unwarranted."

12. Significantly, in the case of Management of Sundaram Industries Limited and Presiding Officer, Labour Court and another, decided on 20.06.2003, in W.P.No.3551 of 2000, the Hon'ble Supreme Court of India made an observation that Maintenance of discipline and order in the work place is very essential and in this regard, Paragraph 19 is extracted hereunder:

"19. I am inclined to hold that the said reasonings of the Labour Court do not justify invocation of Section 11-A so as to direct reinstatement in a case of this nature. Maintenance of discipline and order in the work place is very essential in any work place, public or private. If an employee could be permitted to use vulgar and filthy words against his superior officers and would also attempt to assault, he does not deserve to be retained in service. Even assuming that he had a justifiable cause, if reinstatement would result in encouraging

indiscipline among the workers, then in the alternative the management can be directed to pay reasonable compensation. Such workers who will not behave in a disciplined manner and do not even specifically or seriously dispute the allegation of violent behaviour and using abusive expression, cannot be thrust upon the management who is not willing to take back the worker. In MAHENDRA NISSAN ALLWYNS LTD. v. M.P.SIDDAPPA (2000 (4) L.L.N.,562), the Supreme Court had to deal with a case of aggressive behaviour by the employee and use of filthy language, and the Supreme Court held that the charges were serious in nature. The Supreme Court also remarked that if such charges are not serious charges against a workman worthy of his dismissal from service they (Court) do not know what else can be."

13. In the case of Michel Selvaraj and Ashok Leyland, Limited, reported in 2004 (1) L.L.N. 294, the Hon'ble Division Bench of this Court observed as follows:

"7.In such circumstances, if these acts on the part of the union leader were not enough to contaminate or pollute the otherwise calm and congenial atmosphere in the industry, there could be no other example and the Labour Court has precisely failed to note the true impact of the acts on the part of the appellant. In our opinion, the attitude of sympathy has to be shown where the person concerned deserves the same. The appellant herein was certainly not a person who deserves such sympathy as on the very advent of his service, he had started behaving in an atrocious manner, exhibiting violent temper, etc., and on a number of occasions he was either cautioned or he had agreed to mend his ways."

14. Disputing the contentions raised by the writ petitioner, the learned counsel appearing on behalf of the 2nd respondent states that the 2nd respondent was appointed in the writ petitioner's factory as a workman in the year 1998. During the year 2007, the workers of the petitioner's factory formed a trade union namely "HLL Tea Worker's Welfare Union" and got registered the same under the Trade Union Act. One Mr.Suresh was elected as Secretary of the said Trade Union. Due to his union activity, he was victimized and he was terminated subsequently. Thereafter, the 2nd respondent was elected as the Secretary of the Trade Union. The 2nd respondent, in his capacity as the Secretary of the Trade Union, involved in the Trade Union activities to protect the rights and welfare of the workers. He demanded payment of compensation for the death of the workers, ESI Coverage to all workers and in that connection raised

several disputes, complaints to the respective authorities.

15. It is stated that the writ petitioner Management annoyed with his Union activities and decided to victimize him by means of unfair labour practice. The writ petitioner Management without consulting with the Trade Union unilaterally installed the Hazia Machine and no permission was obtained from the labour authorities and no prior notice was issued to the trade union for installation of the said machine. A meeting was held on 29.07.2009 and the 2nd respondent was informed to attend the meeting as a Secretary of the Trade Union. The 2nd respondent went to the factory and meet the HR officer and attended the meeting. In the said meeting, TPM officer threatened the Management that he will terminate the workers, who failed to increase the production in the "Hazia Machine", that created fear and chaos among the workers, who attended the meeting. Subsequently, the meeting was cancelled.

16. The learned counsel for the 2nd respondent states that the enquiry was not conducted in a free and fair manner. The contention of the 2nd respondent is that the eye witnesses were not examined in the domestic enquiry and the Management witnesses Mr.S.Purushothaman and one Mr.B.Ayyasamy had not stated anything about the charges against the 2nd respondent. The 2nd respondent states that 9 witnesses were examined as RW1 to RW9, which clearly proved that the complaint given by one Mr.K.Sundaram and Mr.Thananjeyan Nair are false. It is further stated that the 2nd respondent was not permitted to enquire the worker namely one Mr.Vijayakumar.

17. It is contended that the initiation of domestic enquiry against the petitioner is in violation of the certified standing orders is illegal. As per the Standing order, the charge sheet must be clear and unambiguous. The enquiry must be conducted by holding the same in a proper manner. However, an improper enquiry was conducted and based on the improper enquiry, the 2nd respondent was dismissed from service.

18. The learned counsel for the 2nd respondent cited the following judgments of the Hon'ble Supreme Court of India:

In the case of State of Punjab Vs. V.K.Khanna, AIR 2001 SC 343, reported in 2010 (3) LLN 693

The Supreme Court observed that it is well settled in service jurisprudence that the concerned authority has to apply his mind upon receipt of the reply to the charge sheet or show cause as the case may be, as to whether a further enquiry is called for. In the event, upon deliberations and due considerations, it is in the affirmative the enquiry follows but not otherwise. On facts, the Supreme Court held that the appointment of

an enquiry officer even before submission of the reply of the delinquent employee to indicated the mindset of the authority that the enquiry should proceed irrespective of his reply, demonstrating that the attitude of the authority towards the delinquent was not free and fair.

In the case of Ch.Appala Reddy Vs. Eastern Power Distribution Company of Andhra Pradesh, Ltd., Visakhapatnam, and other, reported in 2005 (3) L.L.N 187

In that case, the employee challenged the charges framed against him by the enquiry officer on the ground that the same was not preceded by a show cause notice. The Court held that the appointing authority would be in a position to apply its mind only when it calls upon the employee to explain as to the acts misconduct levelled against him and depending upon the satisfaction of the appointing authority on consideration of such explanation, the necessity to proceed further by way of an enquiry or drop further proceedings would arise. As the employer had failed to follow such procedure, the Court, applying the law laid down by the Supreme Court in V.K.Khanna (Vide supra), set aside the charge sheet framed by the enquiry officer.

1997 LIC 2828 (Madan Mohan Thakur (v.) State of Nagaland and others

Once rules applicable to the establishment are clear as to how the enquiry is to be conducted. Such Rules should be complied with.

In Babu Verghese and Ors. Vs. Bar Council of Kerala and Ors. Reported in 1993(3) SCC 433

In this case the apex Court has held that, it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.

The certified standing order being a stator force and binding both the petitioner and the respondent, and it confers the right to the respondent to initiate disciplinary action against the workers and impose punishment, the respondent shall follow the procedure contemplated in the certified standing order, and otherwise the respondent shall allow to reap its natural consequences.

Ganesh Rajan Servai vs Bennett Coleman And Co.Ltd.
And 1994) IIILLJ 877 Bom

In that case the termination orders passed against the petitioners were in contravention of the certified standing orders governing the service conditions of the petitioners. In that case, the termination orders would be void ab initio, They do not exist in the eyes of law. Such termination orders could not have been passed by the company without following the proper procedure laid down in standing Order. In other words, the termination orders are not non est-

The Supreme Court in The Workmen of the Food Corporation of India Vs. Food Corporation of India, 1985 AIR 670, 1985 SCR (2) 1065

In that case the Court held that "No employer since the introduction of the I.D.Act, 1947, and contrary to its Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment(Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the I.D.Act, 1947 would be void."

Harischandra Pathak Vs. Registrar, reported in 1967(I) LLJ 93

It was held by the Madhya Pradesh High Court, that if the main witnesses who could have established the charge was not examined, then there was denial of reasonable opportunity of defence, and the enquiry was vitiated.

In the petitioner case, the main witness one Mr.Om kumar chukla and the Factory manager, HR Manager Vijayalakshmi and the Factory gate security guard and the workers who were attended meeting on the date of alleged incident, particularly the worker namely vijayakumar who had called the petitioner over the phone to attend the meeting were not examined.

30. I state that the witness are in the control of the Disciplinary authority. The Disciplinary authority should arrange to produce the said witnesses.

19. The learned counsel for the 2nd respondent workman also cited various judgments and the same are as follows:

In the case of K.Chandran V. The Presiding Officer & Another, reported in CDJ 2010 MHC 5680 and the relevant paragraph 6 is extracted hereunder:

"6. Before going into the facts and rival contentions, it is to be noted that the Hon'ble Supreme Court in the case of Post Graduate Institute of Medical Education, referred supra, was examining the scope of the explanation to Order 41 Rule 22, which states that upon hearing, respondent may object to a decree as if he had preferred separate appeal. The explanation to Sub-Rule 1 of Rule 22 states that a respondent aggrieved by a finding of the Court in the Judgment on which, the decree appealed against is based may file objection in respect of the decree insofar as, it is based on that finding and notwithstanding that by reason of the decision of the Court on any other finding, which is sufficient for the decision of the suit, the decree is wholly or in part in favour of that respondent. The scope of the explanation to Rule 22 was considered by the Hon'ble Supreme Court and it was held as follows:-

"26. According to the appellants although they did not prefer a counter-appeal, which they could have done under the Explanation to Order 41 Rule 22 of the Code of Civil Procedure, they could nevertheless challenge the finding in Respondent 1's appeal to the Division Bench. It may be, as has been held in Ravinder Kumar Sharma v. State of Assam 1999 (7) SCC 435 that the Explanation inserted by the 1976 Amendment to Order 41 Rule 22, the Code does not make it obligatory to file a cross-objection against an adverse finding of a lower court and that the respondent could attack such finding in its submissions to the appellate forum. "

As far as the above judgment is concerned, the Labour Court award was sought to be quashed in so far as it deprives the petitioner therein backwages and other attendant benefits. In the present writ petition, it is the case of termination, wherein, certain serious misconducts are raised against the workman. Thus, the facts are dissimilar and therefore, the relevance of the citation may not have any avail to the 2nd respondent workman.

In the case of Rajinder Kumar Kindra Vs. Delhi Administration Through Secretary(Labour) and Others reported in CDJ 1984 SC 130, the Hon'ble Supreme Court of India held as follows:

".....This Court in Workmen of M/s.Firestone Tyre Rubber Company of India(P) Ltd., V. Management & Others, held that since the introduction of Section 11-A in the

Industrial Disputes Act, 1947, the Industrial Tribunal is now equipped with the powers to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied upon by the employer establishes the misconduct alleged against the workman."

".....The High Court, in our opinion, was in clearly error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence."

".....Where the order of dismissal is sought to be sustained on a finding in the domestic enquiry which is shown to be perverse and enquiry is vitiated as suffering from non-application of mind the only course open to us is to set it aside and consequently relief of reinstatement must be granted and nothing was pointed to us why we should not grant the same."

The Hon'ble Supreme Court of India with reference to the particular facts and circumstances arrived a conclusion that there was non-application of mind and accordingly, directed the right course to be adopted. The said facts are also inapplicable in respect of the present writ petition.

In the case of Andhra Pradesh State Road Transport Corporation Vs. Additional Labour Court-cum-Industrial Tribunal, Hyderabad, reported in CDJ 1983 APHC 059 the High Court of Andhra Pradesh held as follows:

"8. IT was held by the Supreme Court in Workmen of Fire Stone Tyre and Rubber Co. V. The Management, [1973-I-L.L.J page 279 at 296]: "even where the dismissal of a workman by an employer on ground of misconduct is preceded by a proper and valid domestic enquiry, S. 11-A now empowers the Labour Court or Tribunal to reappraise the evidence and examine the correctness of the finding thereat. Section 11-A further empowers it to interfere with the punishment and alter the same."

In the case of G.Annie Christy Vs. Deputy Chief Mechanical Engineer & Another, reported in CDJ 2010 MHC 6947, the Court held as follows:

"17.....On a thorough perusal of the order of the learned single Judge, we are above to see that the learned single Judge erroneously proceeded, as if the second

respondent is an Administrative Tribunal, established under the Administrative Tribunals Act. The judgments of the Honourable Apex Court reported in 1995 (6) SCC 749 and 1995 (1) SCC 216 relied on by the learned single Judge relates to the jurisdiction of the Administrative Tribunal and the High Courts, in dealing with the disciplinary matters. Those judgments are not pursuant to industrial disputes, that come for adjudication by the Industrial Tribunals. The Industrial Tribunals are specially constituted Courts under the Act and they are clothed with powers under Section 11-A of the Act to re-appreciate the evidence."

"19..... But, this position was altered by introducing Section 11-A of the Act. Section 11-A of the Industrial Disputes Act is extracted hereunder:

The learned single Judge failed to take into account the legislative change by introduction of Section 11-A of the Act and the powers of the Industrial Tribunals to re-appreciate the evidence and to arrive at a different conclusion from that of a disciplinary authority."

In the case of Jltentdra Sigh Rathor Vs. Shribaidyanath Ayurved Bhawan Limited and another, reported in CDJ 1984 SC 028, the Apex Court held as follows:

".....In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld it amounts to a penalty."

".....We are, therefore, of the view that the High Court had no justification to interfere with the direction regarding reinstatement to service and in proceeding to substitute the direction by quantifying compensation of Rs.15,000 it acted without any legitimate basis."

".....It is sufficient for our present purpose to hold that on the facts made out, the approach of the High Court was totally uncalled for and the manner in which the compensation was assessed by vacating the order of reinstatement is erroneous both on facts and in law."

"The appeal], therefore, is allowed and the order of the High Court is set aside and the award of the Industrial Tribunal is restored."

In the case of Scooters India Limited, Lucknow & Others Vs. Labour Court, Lucknow & Others, reported in CDJ 1988 SC 091, the Hon'ble Supreme Court of India held as follows:

"4. The High Court, while sustaining the award passed by the Labour Court, adverted to Section 6(2-A) of the Act which is analogous to Section 11-A of the Industrial Disputes Act and pointed out that the section confers wide powers on the Labour Court to interfere with an order of discharge or dismissal of a workmen and to direct the interfere with an order of discharge or dismissal ordering the reinstatement of the workmen on such terms and conditions as it may think fit, including the substitution of any lesser punishment for discharge or dismissal as the circumstances of the case may require and as such the Labour Court was well within its jurisdiction in setting aside the order of termination of services of the respondent and instead ordering his reinstatement together with 75 per cent back wages."

"7.....It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers under Section 6(2-A) of the Act."

In the case of Ram Kishan Vs. Union of India & Ors. Reported in CDJ 1995 SC 266, the Apex Court held as follows:

"11.It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant

dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but, all other consequential benefits would be available to him."

In the case of Palghat BPL & PSP Thozhilali Union Vs. BPL India Limited & Another, reported in CDJ 1995 SC 1134, the Hon'ble Supreme Court of India observed as follows:

"6. In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at the BPL Bus Stop. The Labour Court had discretion under Section 11-A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances, viz., the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on, the settlement during conciliation proceedings, though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75% of the back wages up to the date of the award. In our considered view, the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. It merely had gone into the question whether the act complained of is a misconduct."

In the case of Rama Kant Misra Vs. State of Uttar Pradesh & Others, reported in CDJ 1982 SC 036, the Apex Court held as follows:

"8.....The appellant was employed since 1957. The alleged misconduct consisting of use of indiscreet or abusive or threatening language occurred on November 18, 1971, meaning thereby that he had put in 14 years of service. Appellant was Secretary of the Workmen's Union. The respondent management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years' service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the Court must interfere. Unfortunately, the labour court has completely misdirected itself by looking at the dates contrary to record and has landed itself in an unsustainable order. Therefore, we are required to interfere."

In the case of Ved Prakash Gupta Vs. Messrs Delton Cable India Private Limited, reported in CDJ 1984 SC 324, the Apex Court held as follows:

"6.....When informed that it was Durg Singh you without any rhyme and reason or provocation abused Shri Durg Singh in a filthy manner."

"13.....It is also seen from the judgment of the Labour Court that though the appellant had produced before the Enquiry Officer 5 sheets of papers with the signatures of about 100 workmen of the factory in support of the statement that the appellant had not abused anyone in the factory during the course of his service and the management had produced Exs. M-6, a list of 90 persons before the Enquiry Officer, he had not called any of those persons to ascertain the truth regarding the alleged abuse of Durg Singh and S.K.

Bagga by the appellant. It is also seen from the judgment of the Labour Court that the appellant was not given a list of the management's witnesses before the commencement of the domestic enquiry. In these circumstances, we are of the opinion that the conclusion of the Labour Court that the Enquiry Officer had not acted properly in the proceedings and that he had not given full opportunity to the appellant as required by law does not call for any interference. The charge levelled against the appellant is not a serious one and it is not known how the charge even if proved would result in any much less total loss of confidence of the management in the appellant as the management would have it in the charge."

"13.....We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him."

In the case of State of Mysore Vs. K.Manche Gowda, reported in CDJ 1963 SC 167, the Apex Court held as follows:

"8. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment."

In the case of Management of Madras Fertilisers Limited, Manali, Madras Vs. The Presiding Officer, reported in CDJ 1989 MHC 057, the Hon'ble High Court of Madras held as follows:

"5.....Consideration of the past record of service has very much gone into the mind of the management on the question of punishment, and the employee had been denied the opportunity to make his say and offer his explanation on this question. As to how far the employee would have succeeded in persuading the management to view the matter leniently and not to indulge in imposing the extreme penalty of dismissal from service, we cannot by ourselves gauge. When we view this question from the above angle, we cannot take exception to the opinion expressed by the learned Single Judge that when there was an omission on the part of the management to put the employee on notice of

the move on the part of the management to take into consideration the past record of service of the employee in the matter of imposition of the punishment, there was a violation of the principles of natural justice and the same error had crept into the thinking on the part of the Labour Court. The vitiating factor was the denial of opportunity to the employee to explain the past record of service at the appropriate time. That has nullified the resultant action. Thereafter the matter has to be viewed untainted by the past record of service. This vitiating factor will not stand mollified by affording an opportunity at the subsequent stage. This has been duly taken note of by the learned Single Judge, and in our view, the learned Single Judge rightly eschewed the past record of service of the employee in the matter of consideration of the punishment to be imposed."

In the case of Harischandra Pathak Vs. Registrar of Co-operative Societies, reported in CDJ 1965 MPHC 039, the Madhya Pradesh High Court held as follows:

"9.....The gist of the charge was that the petitioner communicated the offending information to the press and these were the main witnesses who could have established that charge. By not examining them, the Enquiry Officer denied to the petitioner a reasonable opportunity of defending himself."

".....We would also further like to say that difficulty of proof is no substitute for proof necessary to establish the charge and it cannot support an unfair conclusion grounded merely on suspicion"

In the case of Ananda Bazar Patrika Private Limited, Vs. Their Employee, reported in CDJ 1963 SC 213, the Apex Court held as follows:

".....There can be no doubt that at the domestic enquiry it is competent to the enquiry officer to refuse to examine a witness if he bona fide comes to the conclusion that the said witness would be irrelevant or immaterial. If the refusal to examine such a witness, or to allow other evidence to be led appears to be the result of the desire on the part of the enquiry officer to deprive the person charged of an opportunity to establish his innocence, that of course, would be a very serious matter."

In the case of Workmen of the Food Corporation of

India Vs. Messrs Food Corporation of India, reported in CDJ 1985 SC 032, the Apex Court observed as follows:

"Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the ID Act, 1947 would be void. It is not necessary to call in aid precedents to substantiate this too obvious and well established proposition."

In the case of Ch. Appala Reddy Vs. Eastern Power Distribution Company of A.P., Ltd., reported in CDJ 2005 APHC 767, the High Court of Andhra Pradesh held as follows:

"7. In any disciplinary proceedings, the necessity to appoint an Enquiry Officer arises only when the appointing authority points out certain acts of indiscipline on the part of the delinquent employee and the explanation offered by the employee is not satisfactory. On the other hand, where the explanation is found to be a satisfactory, the necessity to proceed further does not arise or remain. In V.K. Khanna's case (1 supra), the Supreme Court reinstated this position of law and held that appointment of an Enquiry Officer even before a show-cause notice or charge sheet is served upon an employee is unknown to service jurisprudence. It was further observed that in such an event, an element of bias exists vis-a-vis the Enquiry Officer."

"8.....Conversely, the need to appoint an Enquiry Officer would arise if only the appointing authority is not satisfied with the explanation offered by the employee and that he proposes to inflict a major penalty."

"9..... As observed earlier, initiation of disciplinary proceedings against the appellant commenced with the appointment of an Enquiry Officer and the ratio laid down by the Supreme Court gets attracted to the facts of the case."

In the case of Madan Mohan Thakur Vs. State of Nagaland & Others, reported in CDJ 1996 Assam HC 307, the High Court of Gauhati held as follows:

"12....It appears to me that once Rules are clear as to how enquiry is to be conducted, such Rule should be complied with. As I have stated earlier, as a result

of the enquiry the petitioner was dismissed from service. After all dismissal from service has a very serious consequences in the life of an employee. Therefore, in my view a proper enquiry in terms of the Rules ought to have been made."

".....Therefore, in my view, there is failure of compliance of the Rules contemplated in this regard."

In the case of State of Punjab Vs. V.K.Khanna, reported in CDJ 2000 SC 576, the Hon'ble Supreme Court of India observed as follows:

"34.what bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply – is it an indication of a free and fair attitude towards the officer concerned? The answer cannot possibly be in the affirmative. It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative – the inquiry follows but not otherwise and it is this part of service jurisprudence on which reliance was placed by Mr Subramaniam and on that score, strongly criticised the conduct of the respondents (sic appellants) herein and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record."

20. All the above cases cited by the learned counsel for the 2nd respondent are looked into carefully by this Court and one way or other, the facts as well as the grounds taken in those cases are no way connected with the facts and circumstances of the present case on hand.

21. Particularly, the writ petition on hand, the charge sheets were framed, independent enquiry was conducted and the Management established the charges before the enquiry proceedings and the enquiry officer held that the charges are proved by affording opportunity to all the parties concerned.

22. In the present case, the Labour Court categorically found that the fairness of the domestic enquiry is just and proper. The Labour Court further came to a conclusion that there is no scope for recording further evidence regarding the guilt of the 2nd respondent workman. When the fairness of the enquiry was tested and held that it was fair, just and proper, there was no further scope for recording evidence. Thus, Labour Court has no reason to interfere with the quantum of punishment as the charges are undoubtedly serious and regarding the assault against the superior officer inside the factory premises.

23. On reading of the entire evidences, this Court is able to found that the filthy language used by the 2nd respondent workman is intolerable and he has showed a sort of heroism by using such filthy language inside the premises against the superior officials. In this regard, the learned counsel for the 2nd respondent states that amongst such class of people, such language may be common. However, usage of such languages inside the work place is certainly impermissible and such an indiscipline ended with an assault against the officer, which can never be tolerated. The evidence of the witnesses also reveals that the language used by the 2nd respondent was so harsh, filthy and unparliamentary and further, he pulled the shirt collar of an Executive and accordingly, acted unbecoming of a workman inside the premises. The entire facts and circumstances reveals the position of the 2nd respondent as an office bearer in the Union emboldened him to behave in such an unruly manner and therefore, this Court cannot show any leniency or misplaced sympathy in respect of the proved charges against the 2nd respondent.

24. In the present writ petition, undoubtedly, the Labour Court has shown a misplaced sympathy though the fairness of the enquiry was upheld and the Labour Court held that there is no scope for further evidence. Under these circumstances, the exercise of the discretionary power under Section 11-A of the Industrial Disputes Act for the purpose of extending misplaced sympathy or leniency in respect of proved grave misconduct, can never be upheld by the High Courts. Perusal of the Award is unambiguous that the findings are against the 2nd respondent. However, this Court is of the opinion that the Labour Court has erroneously exercised the discretionary powers provided under Section 11-A of the Industrial Disputes Act, which can never be upheld by the High Court.

25. In respect of the second charge that the 2nd respondent pulled the shirt collar of the TPM officer and abused him in filthy language, the 2nd respondent states that the allegation itself is false. With regard to this charge also, he states that the enquiry was improper. The termination of the petitioner is

malafide, unfair labour practice and victimization. It is contended that the past record of the 2nd respondent cannot be relied upon in awarding the punishment without affording opportunity. In this regard, it is stated the punishment of termination is disproportionate with the gravity of the charges framed against the 2nd respondent. By citing all these grounds, the learned counsel for the 2nd respondent states that the Labour Court is empowered to invoke Section 11-A of the I.D.Act and modified the punishment. Thus, there is no infirmity or irregularity in the award and consequently the writ petition is liable to be dismissed.

26. Broadly, the learned counsel for the 2nd respondent contended that the Labour Court / Industrial Tribunal after introduction of Section 11-A of the Industrial Disputes Act, 1947 is clothed with necessary power, and jurisdiction to reappraise the material available on record and substitute its own findings for that of the disciplinary authority. The power exercised by the Labour Court / Industrial Tribunal is akin to that of an Appellate Court.

27. The Labour Court / Industrial Tribunal is duty bound to re-appreciate the evidence even in cases where the workman files a memo conceding as to the validity of the domestic enquiry. The Labour Court / Tribunal even after holding that the domestic inquiry was held in accordance with the principles of natural justice may, yet, interfere with the findings and substitute its own findings; on the basis of the very same evidence, it can reach its own conclusion by recording the own findings and may reverse the findings arrived at by the disciplinary authority and hold the charges are not established. The Labour Court / Tribunal can also find that the evidence and material available on record justifies the findings of misconduct arrived at by the disciplinary authority and still hold that the order of discharge or dismissal is not justified under the circumstances of a particular case and accordingly only lesser punishment.

28. The 2nd respondent has stated that the Enquiry was not held fair and proper, and the charge against him was not proved in the Domestic enquiry and the findings of the enquiry officer is perverse and not supported by evidence and the punishment imposed on him is highly disproportionate. Hence, the finding of the Labour Court that the charges levelled against him are proved in the Domestic enquiry is bad in law, perverse and the punishment imposed on him by the Labour Court i.e., one increment cut with cumulative effect and denial of 50% back wages are arbitrary and illegal.

29. The learned counsel for the writ petitioner in reply, stated that an enquiry officer was appointed. The charge sheet

issued to the 2nd respondent was in Tamil and English. 4 witnesses were examined on the petitioner side and 11 documents were marked. The 2nd respondent had examined 8 witnesses and 11 documents were marked. The procedures of enquiry was followed in compliance with the Principles of Natural Justice.

30. The learned counsel for the petitioner mainly contended that the award passed by the Labour Court in I.D.No.03 of 2011, the findings are as below:

i) The 2nd Respondent's I.A.No.4 of 2013 for deciding fairness of domestic enquiry is found to be fair, just and proper and there is no scope of recording further evidence regarding the guilt of the 2nd Respondent.

ii) The Court held that the Domestic Enquiry conducted by the Petitioner is fair, just and proper and needs no intervention and the same has attained its finality.

iii) Labour Court analysed the evidence in the domestic enquiry and concluded that the evidence in the domestic enquiry clearly established that the charges have been proved.

iv) The misconduct leveled against by the 2nd Respondent is proved by the Petitioner.

v) The punishment of dismissal for misconduct committed by the 2nd Respondent is grossly disproportionate. Therefore, the Court ordered to cut one increment of the 2nd Respondent with cumulative effect.

vi) Also, passed an Award of reinstatement with continuity of service and 50% backwages.

31. This Court is of the considered opinion that compromising discipline in any form in an industry / factory will cause serious damage not only to the industry but for the development of the trade and business in our great Nation.

32. It is relevant to remind the fundamental duties of a citizen enunciated under Article 51-A of the Constitution of India. Sub Clause (i) to Article 51-A enumerates that "to safeguard public property and to abjure violence". Sub Clause (j) stipulates that "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement".

33. Emphasizing the fundamental duties of the citizen under Article 51-A of the Constitution of India, this Court is of the strong opinion that rights and duties are inseparable concepts and the person, who is claiming right, must keep in mind that he has got corresponding duties towards the fellow citizen and to our great Nation at large. Rights and duties are the relative terms and therefore, in the current day situation, while dealing with the rights of the individuals, his duties are also to be considered by the Constitutional Courts in order to adopt a

pragmatic and balancing approach. It is not as if while upholding a rights of a citizen, Court can neglect his duties. Only if a citizen respects his duties as law requires, then alone he can claim his right under the law and it is not as if he can violate his duties and responsibilities and claim rights in isolation. Such a concept, if at all in the mind of a person, the same can never be encouraged by the Constitutional Courts.

34. Keeping this view, this Court is of an opinion that certain allegations, manhandling or physically attacking or assaulting the co-employees or the higher officials can never be tolerated and such offences are already classified as punishable offence under the Indian Penal Code. This apart, respecting the fellow citizen or colleagues in the work place is of paramount importance. Only through maintaining the discipline and decorum, the industrial activities can be developed, so also, the developmental activities across the country can be taken forward. Thus, discipline and decorum in industrial places are of paramount importance. It is an organizational discipline, which would make the industry to grow further and to develop the prospectus of our great Nation as well as the people at large. Thus, compromising the discipline will lead to destruction within the industry / public institutions. Any indisciplined industry or organization can never see the light of growth. Most of the industries / public institutions had collapsed on account of indiscipline, mal administration or corruption. Thus, discipline, decorum, honesty and integrity are the vital characters to be maintained in the industry / public institutions, factories and trade activities, so as to take our Nation forward on par with the global standards. Our great Nation is a fast growing Country in the world. Under these circumstances, Courts are also duty bound to ensure that such discipline, decorum, honesty and integrity are being maintained at all institutional levels and all such institutional respects are also protected.

35. This being the concept to be borne in mind, this Court is of an opinion that any indiscipline, if noticed and disciplinary actions are initiated against the employees, Courts must be keen in analyzing the factors and arrive a conclusion that such indiscipline activities are brought down and dealt in accordance with law without showing any leniency or misplaced sympathy. Thus in disciplinary matters, misplaced sympathy by the Courts also would lead to destruction of industries / public institutions. The personal likes and dislikes of certain elements or character should not have any impact in deciding such cases of disciplinary proceedings. It is not as if we are compromising the principles, we are compromising the National developments and therefore, there cannot be any such misplaced sympathy in the matter of discipline and decorum in industries

and in public institutions.

36. This being the view of this Court, the present case is to be considered with reference to such principles.

37. The findings of the Labour Court reveals that the misconduct levelled against the workman stands duly proved through the evidence. In paragraph 10 of the award, it is observed that the Labour Court has already upheld the fairness of enquiry and in deciding so, the Labour Court had taken note of the contention of the workman and had rejected the same. The workman himself has marked as Ex-P1, which is the letter dated 26.08.2009 in reply to the charges leveled against him and the same was also marked in the enquiry proceedings. The workman has not shown any prejudice in the charge sheet being served upon him along with the enquiry notice. Under these circumstances, the Labour Court had arrived a conclusion that the contention of the workman cannot be sustained at that stage for the reasons that the Labour Court has already come to the conclusion that the enquiry conducted by the Enquiry officer is fair and proper. In paragraph 11 of the award also, the facts are recorded.

38. Ultimately, the Labour Court come to the conclusion that the misconduct levelled against the workman stands duly proved through evidence placed before the Labour Court. After coming to the conclusion that the enquiry was conducted in a free and fair manner and after made a finding that the charges levelled against the workman were proved beyond doubt, there is no reason whatsoever to interfere with the quantum of punishment by invoking Section 11-A of the Industrial Disputes Act.

39. Section 11-A of the Act cannot be used in a routine manner, so as to modify or reduce the punishment and a pragmatic and balanced approach is required. The exercise of discretionary powers under Section 11-A of the Industrial Disputes Act must be exercised with logic, reasoning and by application of mind. The situation established before the Labour Court and the gravity of the charges proved against the workman must be considered before modifying or quashing the punishment imposed by the employer. The Labour Court ought to have considered the fact that discipline in an industrial establishment is of paramount importance and the nature of the proved misconduct its gravity and seriousness are to be looked into before modifying the punishment. In a case, where a workman assaulted, the superior official by using filthy language and his previous misconducts in the factory were also established by the employer, then this Court is of the considered opinion that there is no reason whatsoever to interfere with the penalty of termination imposed by the employer. Every such punishment imposed is meant to sent a clear message to the society at large, more specifically to

the employees working in industrial establishments / public institutions. The major penalty in this regard is to ensure that the industrial establishments are protected from such unruly activities of few workman and to protect the interest and the welfare of the organisation itself. Therefore, the Labour Court cannot simply interfere with the quantum of punishment without assigning proper and acceptable reasons. Merely invoking Section 11-A of the Industrial Disputes Act is certainly impermissible and in all such cases, where Labour Court has taken a decision to modify the punishment or to quash the punishment imposed by the employer, then adequate reasons are to be recorded in the award and a mere observation that the punishment of termination is "grossly disproportionate" is unacceptable for arriving such a conclusion that the punishment is grossly disproportionate. The Labour Court is bound to assign proper and acceptable reasons. Thus, the findings of the Labour Court that the punishment is grossly disproportionate is not based on any valid material and in the absence of any convincing reason, the said findings are construed to be perverse and unsustainable.

40. Under these circumstances, this Court is of the opinion that the findings in the award impugned that the punishment of termination imposed on the 2nd respondent is grossly disproportionate is neither candid nor convincing, but the said finding is made blanketly and without assigning reasons.

41. This being the factum, this Court has no hesitation in coming to the conclusion that the award of the Labour Court is perverse and not in consonance with the established legal principles.

42. Thus, the Award dated 15.05.2013 passed in I.D.No.03 of 2011 is quashed and the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Puducherry.

+1cc to M/s.S.Ramasubramaniam & Associates,
Advocate, S.R.No.82367

W.P.No.33610 of 2013

MP (CO)
CS/31/10/2019



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