

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-11-2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.39179 of 2015

And

M.P.No.1 of 2015

The Management of Brakes India Ltd.,
Represented by its Vice-President-Per & HR
P.Ganapathy,
Padi,
Chennai-600 050. Petitioner

-vs-

1.The Presiding Officer,
I Additional Labour Court,
Chennai-600 104.

2.B.Kuppusingh
C/o T.Fenn Walter, Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in I.D.No.94 of 1981 and quash its Award dated 09.09.2015 in respect of setting aside the dismissal of the second respondent and consequentially issuing direction to the petitioner to pay lump sum of Rs.10,00,000/- to the second respondent-workman as compensation in lieu of reinstatement with minor punishment.

For Petitioner : Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeer Ahamed

For Respondent-1: Labour Court
For Respondent-2: Mr.G.Purushothaman

ORDER

The Award of the Labour Court dated 09.09.2015 passed in I.D.No.94 of 1981, is sought to be quashed and a consequential direction is also sought for to pay a lump sum amount of Rs.10 lakhs to the second respondent-workman by the writ petitioner-Company as compensation in lieu of reinstatement with minor punishment.

2. The writ petitioner-Establishment is the manufacturer of Automobile parts. The writ petitioner-Company states that the second respondent-workman along with two other office bearers of Brakes India Employees Union, P.Selvaraj and P.V.Madhavan, challenged the leadership of S.M.Narayanan and prevented him from conducting Union Elections during April 1977. Thereafter, intra Union rivalry intensified between these two group of office bearers. As a consequence, the second respondent, P.Selvaraj and P.V.Madhavan with a view to upstage Mr.S.M.Narayanan and Mr.N.Devarajan, instigated the workmen to indulge in stoppage of work, insubordination, disorderly behaviour, loitering, holding demonstration etc., all being done during normal working hours of the factory in both the shifts. This was intensified as a stay in strike from 13.07.1977 to 13.08.1977. On 13.08.1977, an accord was reached before the Chief Minister of Tamil Nadu and work resumed in factory on 19.08.1977 after 33 days of illegal and unjustified strike. In terms of the above accord, two workmen Mr.C.S.Neelakandan and Mr.P.Selvaraj were nominated as the authorised representatives of the whole body of workmen of the factory, pending the question of conduct of the Union Elections.

3. The writ petitioner-Company states that ever since the reopening of the factory on 19.08.1977, the workmen did not have any respect for the writ petitioner-Management reached before the Chief Minister of Tamil Nadu and resorted to deliberate go slow, committing various misconducts in terms of Standing Orders, Rules, Practices and Convention regarding the factory working and other acts of indiscipline including threatening, abusing, intimidating and making false allegations on supervisory and other senior staff. The industrial unrest continued thereafter and it worsened during the beginning of October 1977, leading to violence inside and the factory premises.

4. The writ petitioner-Company had received many written as well as oral complaints against the second respondent-workman for various acts of indiscipline committed during the period of stay in strike i.e., 13.07.1977 to 13.08.1977 and during the period from 19.08.1977 to 13.10.1977.

5. It is stated that on 21.07.1977, the second respondent-workman entered into the Office the writ petitioner-Management and sat on the tables and threw away the office papers and indulged in the grave acts of singing and shouting in an indecent and disorderly manner. On 21.07.1977, on the same day, when the second respondent-workman was illegally staying inside the factory and he threatened the Factory Superintendents by saying that all the Supervisors should take iron rods and sticks and join the workmen stand outside and if any outsiders

comes to fight with them and that was his command. On 22.07.1977, at the instigation of the second respondent-workman, Mr.T.V.Sivaraman of the Accounts Department staff was not allowed to leave the office, enabling him to prepare for disbursement of provident fund loans to casual workers. Only after the second respondent signed the Gate Pass (without any authority), the said staff would go out. Again Mr.T.V.Sivaraman, Mr.Lakshmana Rao and Mr.K.Srinivasan were prevented from leaving Office fully. Only after the second respondent signed the Gate Pass, they were allowed to leave the office. Thus, the second respondent-workman threatened the staff that they could not leave the office without his written order.

6. From 19.08.1977 onwards, the second respondent-workman was not working and not found in the work spot. On 23.08.1977, when Mr.Thiagarajan Superintendent asked the second respondent-workman to entertain the work, the second respondent-workman shouted at him "you have come upto position by crow-catching the management. You are a slave to management". He also abused him stating "உனக்கு மாணம், ஈனம், குடு, சொரணை எதுவும் இல்லை. உன்னையும் உன் மேனேஜரையும் ஒழிக்காமல் விடமாட்டேன். அது நடந்து முடியும்வரை நான் என் சீட்டுக்கு வந்து வேலை செய்ய மாட்டேன்". On 13.08.1977, lockout was declared and the second respondent-workman did not carry out any work from 19.08.1977 to 13.10.1977. An enquiry was conducted. The Enquiry Officer held that the charges against the second respondent were proved. The second respondent-workman was provided with an opportunity to defend his case. Thus the principle of natural justice has been complied with and based on the proved charges, the second respondent-workman was dismissed from service on 21.11.1979.

7. The learned Senior Counsel, appearing on behalf of the writ petitioner-Company, made a submission that the findings of the first respondent-Labour Court reveals that there was abundant evidence to prove the charges levelled against the second respondent-workman Kuppusingh and the Enquiry Officer came to the right conclusion. The learned Senior Counsel said that when there were abundant evidence to prove the charges against the second respondent-workman, and the Enquiry Officer also conducted the enquiry in compliance with the principles of natural justice, there is no other reason to consider the case of the second respondent-workman. The Labour Court erroneously set aside the order of dismissal and a direction was issued to the writ petitioner-Management to pay a lump sum of Rs.10 lakhs to the workman as compensation in lieu of reinstatement with minor punishments. Such an Award passed by the Labour Court is contrary to the findings in the Award. In other words, the findings as well as the decision arrived by the Labour Court are self-contradictory.

8. The Labour Court found that during the heat moment, the second respondent-workman Kuppusingh, who was the Union

leader might have instigated and abused the management staff and instigate the co-workers to go on strike. Though the workman in the main gate prevented the management staff from attending the work and allowed them to go out of the factory. But he did not prevented the managerial staff from going out of the factory. Though the Labour Court made such a finding erroneously formed an opinion that there is a small amount of victimisation because the second respondent-workman happened to be the Union leader. Under these circumstances, the Labour Court held that lesser punishment would have been appropriate. Based on such erroneous findings, the Labour Court directed the writ petitioner-Management to pay a compensation of Rs.10 lakhs in lieu of reinstatement as the second respondent-workman reached the age of superannuation.

9. In support of the said contentions, the learned Senior Counsel cited the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of Bengal Bhatdee Coal Company vs. Ram Probesh Singh and Others [1963 (1) LLJ 291], wherein in paragraph-7, it has been held as under:-

"But the fact that the relations between an employer and the union were not happy and the workmen concerned were office-bearers or active workers of the union would by itself be no evidence to prove victimisation, for if that were so, it would mean that the office-bearers and active workers of a union with which the employer is not on good terms would have a carte blanche to commit any misconduct and get away with it on the ground that relations between the employer and the union were not happy."

10. In the case of Bharat Iron Works vs. Bhagubhai Balubhai Patel and Others [AIR 1976 SC 98], wherein the Hon' ble Supreme Court in paragraphs-10 and 12, held as under:-

"10. A word of caution is necessary. Victimisation is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is, per se, no crucial instance.

Collective bargaining being the order of the day in a democratic social welfare State, legitimate trade union activity which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activity can flow in healthy channel only on mutual cooperation between employer and employee and cannot be considered as irksome by the management in the best interest of the concern. Dialogues with representatives of a union help striking a delicate balance in adjustment and settlement of various contentious claims and issues.

12. Again victimisation must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him. The question to be asked is: Is the reason for the punishment attributable to a gross misconduct about which there is no doubt or to his particular trade union activity which is frowned upon by the employer? To take an example, suppose there is a tense atmosphere prevailing in a company because of a strike consequent upon raising of certain demands by the union, each party calling the other highly unreasonable or even provocative, the tribunal will not readily accept a plea of victimisation as answer to a gross misconduct even when an employee, be he an active office-bearer of the union, commits assault, let us say, upon the Manager, and there is reliable legal evidence to that effect. In such a case the employee, found guilty, cannot be equated with a victim or a scapegoat and the plea of victimisation as a defence will fall flat. This is why once, in the opinion of the Tribunal a gross misconduct is established, as required, on legal evidence either in a fairly conducted domestic enquiry or before the Tribunal on merits, the plea of victimisation will not carry the case of the employee any further. A proved misconduct is antithesis of victimisation as understood in industrial relations. This is not to say that the Tribunal has no jurisdiction to interfere

with an order of dismissal on proof of victimisation."

11. In the case of Indian Railway Construction Co. Ltd vs. Ajay Kumar [2003 (4) SCC 579], wherein the Hon'ble Supreme Court in paragraphs-26 and 27, held as under:-

"26. ... Union activities are meant to present views of employees before the employer for their consideration; but the same is not intended to be done in a violent form. Decency and decorum are required to be maintained.

27. We find substance in the plea of learned counsel for the appellant that an employee even if he claims to be a member of the employees' union has to act with a sense of discipline and decorum. Presentation of demands relating to employees cannot be exhibited by muscle power. It must be borne in mind that every employee is a part of a functioning system, which may collapse if its functioning is affected improperly. For smooth functioning, every employer depends upon a disciplined employees' force. In the name of presenting demands they cannot hold the employer to ransom."

12. In the case of Usha Breco Mazdoor Sangh vs. Management of M/s.Usha Breco Ltd and Another [2008 (2) LLJ 945], wherein the Supreme Court in paragraphs-38 and 39, held as under:-

"38. Assault, intimidation are penal offences. A workman indulging in commission of a criminal offence should not be spared only because he happens to be a union leader. The Act does not encourage indiscipline.

39. The upshot of our discussion is that the decision of the Labour Court should not be based on mere hypothesis. It cannot overturn a decision of the management on ipse dixit. Its jurisdiction under Section 11-A of the Act although is a wide one, must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinise and analyse the evidence but what is important is how it does so."

13. The second respondent disputed the contentions raised on behalf of the writ petitioner by stating that a group

of workmen under the leadership of second respondent-workman in the industrial dispute contested the Union Elections in 1974 in the name 'Marpokku Thozhilalar Koottani (Progressive Workers Union)". But the leaders of the Congress Party got elected with narrow margin and Mr.S.M.Narayanan became the President and Mr.N.Devarajan became the Secretary. However, Mr.Madhavan, Mr.Selvaraj and the second respondent-workman of Marpokku Thozhilalar Koottani got elected as the Vice President, Joint Secretary and Treasurer respectively. Thereafter, the management started harassing the office bearers belonging to the said Koottani. The Management started interfering with the Trade Union activities and indulged in unfair labour practices. The Management took partisan view and started victimising the followers of the Marpokku Thozhilalar Koottani. Since a dissident group of Progressive elements under the leadership of second respondent-workman contested and succeeded in the elections. Narrating these facts, the second respondent-workman made a submission that the entire disciplinary action as well as the imposition of the major penalty of dismissal from service is a victimisation. The writ petitioner-Company had indulged in unfair labour practice interfered with the Trade Union activities and victimised the workmen belonging to 'Marpokku Thozhilalar Koottani'.

14. The contention of the second respondent, at the outset was that on account of the fact that Marpokku Koottani workmen were elected and started questioning certain activities of the Management. They have indulged in victimising the second respondent and his supporters, which resulted in initiation of disciplinary proceedings and imposition of dismissal from service. The narration of the second respondent-workman mostly establishes that certain election disputes and after election issues were the reasons for institution of disciplinary proceedings, it is further contended that the management had directed the second respondent-workman and his followers indiscriminately and thereby victimised even the Koottani members with some ulterior motive.

15. The learned counsel, appearing on behalf of the second respondent-workman, cited the judgment of the Hon'ble Supreme Court of India in the case of K.V.S. Ram vs. Bangalore Metropolitan Transport Corporation [(2015) 12 SCC 39]. In the judgment, cited supra, the Hon'ble Supreme Court made an observation that while exercising the jurisdiction under Articles 226 and 227 of the Constitution of India, the Courts must keep in mind the goals set out in the Preamble and in Part IV of the Constitution, while construing social welfare legislations and the relevant paragraphs 10 to 15 are extracted hereunder:-

"10. In the writ petition, while setting aside the award of the Labour Court,

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

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

"7. ... A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction.

A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was

insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

(emphasis supplied)

12. In *Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd.* [*Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd.*, (2014) 6 SCC 434 : (2014) 2 SCC (L&S) 291], it was held as under: (SCC pp. 440-41, paras 15-16)

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

reasoning, which has served the ends of justice.

16. It is relevant to mention that in *Shalini Shyam Shetty v. Rajendra Shankar Patil* [Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] , with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that: (SCC p. 348)

'49. (m) ... The power of interference under [Article 227] is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.' It was also held that: (SCC p. 347, para 49)

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

13. Emphasising that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution of India, the courts are to keep in view the goals set out in the Preamble and in Part IV of the Constitution while construing social welfare legislations, in *Harjinder Singh v. Punjab State Warehousing Corpn.* [Harjinder Singh v. Punjab State Warehousing Corpn., (2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] , this Court has held as under: (SCC p. 205, para 21)

"21. Before concluding, we consider it necessary to observe that while

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

'10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.'

(State of Mysore v. Workers of Gold Mines [State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923] , AIR p. 928, para 10.)"

14. Once the Labour Court has exercised the discretion judicially, the High Court can interfere with the award, only if it is satisfied that the award of the Labour Court is vitiated by any fundamental flaws. We do not find that the award passed by the Labour Court suffers from any such flaws. While interfering with the award of the Labour Court, the High Court did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution of India and the impugned judgment [K.V.S. Ram v. Bangalore Metropolitan Transport Corpn., Writ Appeal

No. 390 of 2008, decided on 3-9-2012 (KAR)] cannot be sustained.

15. In the result, the appeal is allowed and the impugned judgment [K.V.S. Ram v. Bangalore Metropolitan Transport Corpn., Writ Appeal No. 390 of 2008, decided on 3-9-2012 (KAR)] passed by the High Court is set aside and the award passed by the Labour Court is restored. In the facts and circumstances of the case, we make no order as to costs."

16. Relying on the abovesaid judgment of the Hon'ble Supreme Court of India, the learned counsel for the second respondent-workman made a submission that there is no infirmity in respect of exercising discretionary jurisdiction by the Labour Court by invoking Section 11-A of the Industrial Disputes Act, 1947. The Labour Court in the present case considered the overall circumstances with reference to the alleged misconducts and other possible circumstances. Therefore, the Labour Court applied its mind with reference to the facts and circumstances and moulded the relief for the purpose of exercising the discretionary powers under Section 11-A of the Industrial Disputes Act, 1947. Under these circumstances, the writ petition is liable to be dismissed.

17. In the case of Mahindra and Mahindra Ltd. vs. N.B. Narawade, (2005) 3 SCC 134, wherein the Hon'ble Supreme Court, in paragraph-20, held as follows:-

"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade

the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. [(1960) 1 LLJ 518 (SC)] and New Shorrock Mills [(1996) 6 SCC 590 : 1996 SCC (L&S) 1484] this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove."

18. Relying on the abovesaid judgment of the Hon'ble Supreme Court of India, the learned counsel for the second respondent-workman urged this Court by stating that the Labour Court cannot by way of sympathy alone exercise the powers under Section 11-A of the Industrial Disputes Act, 1947 and reduce the punishment. The Supreme Court referring the cases of Orissa Cement Ltd. [(1960) 1 LLJ 518 (SC)] and New Shorrock Mills [(1996) 6 SCC 590] held that "punishment of dismissal for using of abusive language cannot be held to be disproportionate".

19. In the case of Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Others [(1993) 4 SCC 727], wherein the Hon'ble Supreme Court, in paragraphs 20 to 29, held as under:-

"20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to

administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In *Chairman, Board of Mining Examination v. Ramjee* [(1977) 2 SCC 256 : 1977 SCC (L&S) 226 : (1977) 2 SCR 904] the Court has observed that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

22. In *Institute of Chartered Accountants of India v. L.K. Ratna* [(1986) 4 SCC 537 : (1986) 1 ATC 714 : AIR 1987 SC 71] , *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613] (Bhopal Gas Leak Disaster case) and *C.B. Gautam v. Union of India* [(1993) 1 SCC 78] the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated.

23. What emerges from the above survey of the law on the subject is as follows.

24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the 'reasonable opportunity' incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the Forty-second Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in

rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the Forty-second Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to

come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an

opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's

reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

20. Relying on the abovesaid three judgments of the Hon'ble Supreme Court, the learned counsel for the second respondent-workman reiterated that there was no serious allegations against the second respondent-workman and there was no allegation of manhandling or otherwise. Contrary, during the course of agitation, certain incidents are possible and unavoidable. On account of certain unavoidable circumstances during the strike period, certain minor incidents took place, which cannot be construed as major misconducts, warranting the maximum penalty of dismissal from service. In this context, the Labour Court considered the overall facts and circumstances and arrived a conclusion that the second respondent-employee is entitled for reinstatement. Thus, there is no infirmity in respect of the Award passed and therefore, the writ petition is devoid of merits.

21. This Court is of the considered opinion that the perusal of the entire facts and circumstances reveals that the election creates certain unrest in the factory and the persons from two different groups were elected, which caused many problems in the functioning of the Union itself. The rift between the election office bearers lead to an industrial unrest and therefore, this Court is unable to come to a conclusion that the act of the writ petitioner-Management is a victimisation. This apart, the proved misconduct is no way connected with the election disputes. Even in case of any election dispute or otherwise, the office bearers of the members of the Union are bound to settle the issues by following the procedures contemplated under the Law. Contrarily, the workmen cannot indulge in commission of misconduct or committing certain illegal activities inside the factory premises. On account of election dispute, there was an unrest amongst the various groups of the Union. This resulted in industrial unrest and therefore, the writ petitioner-Management cannot be held responsible for such an unrest and it was created on account of the election disputes.

22. The facts and circumstances further reveals that the misconducts were committed on account of such election activities and therefore, the Management cannot be held responsible for such activities and under these circumstances, there is no possibility of victimisation or unfair labour practice on the part of the writ petitioner-Management. Once an unrest is created on account of certain election disputes between the Union members or the office bearers, then the Management has to take a stand in respect of maintenance of industrial peace. Therefore, there is no irregularity or illegality in initiating disciplinary proceedings against the workmen who have committed certain grave misconducts.

23. Specific allegations are set out in the charge sheet and the domestic enquiry was conducted. The domestic enquiry reveals that the charges against the second respondent were proved. This apart, the Labour Court also found that there was abundant evidence to prove the charges levelled against the second respondent-workman and the Enquiry Officer also came to a right conclusion. When the Labour Court found that the Enquiry Officer has rightly arrived a conclusion based on the evidences that the charges levelled against the second respondent-workman are proved, then there is no reason whatsoever to set aside the dismissal order and award compensation.

24. This Court has considered the similar issue elaborately in respect of the principles to be followed regarding the proved grave misconducts in WP No.33610 of 2013 dated 25.09.2019 and the relevant paragraphs 31, 32, 33, 34, 35 and 39 are extracted hereunder:-

"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.

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 send 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."

25. In view of the facts and circumstances, this Court is of the considered opinion that the findings of the Labour Court is self-contradictory and when the Labour Court arrived a conclusion that the Enquiry Officer rightly made the findings that the charges levelled against the second respondent-workman were proved, then the setting aside the order of dismissal is undoubtedly perverse.

26. This Court reiterated that exercise of discretionary power under Section 11-A of the Industrial Disputes Act, 1947, must be done cautiously by the Labour court. The power of discretion is granted to exercise such discretion on certain mitigating circumstances if any grave injustice is committed to an employee. Therefore, while exercising the discretionary powers under Section 11-A of the Industrial Disputes Act, 1947, the Labour Court should keep in mind that adequate reasons must be recorded for modification or cancellation of punishments.

27. Mere usage of words 'proportionately' or 'disproportionately' is insufficient to modify or to cancel the punishments. Mere usage of such words would not meet out the purpose and object of the discretionary powers contemplated under Section 11-A of the Industrial Disputes Act, 1947. Thus, the Labour Court should exercise the discretionary powers meaningfully and by recording the reasons and such reasons must be candid and convincing. Mere recording of reasons are also insufficient. The reasons must be convincing and must be in

consonance with the sound legal principles as well as the facts established before the Labour Court.

28. The Labour Court in its findings accepted the findings of the domestic Enquiry Officer and arrived a conclusion that the charges against the workmen are proved. When the grave charges are proved and the nature of the misconduct committed would establish that the said misconduct affected the industrial peace, then there cannot be any leniency or misplaced sympathy for the purpose of modification or cancellation of the punishments imposed. Such misplaced sympathy would send a wrong message and the Courts in the matter of industrial discipline and industrial peace, cannot show any such leniency or misplaced sympathy affecting the industrial development, which is also a pillar for the development of our Great Nation. Thus, the decision arrived by the Labour Court is undoubtedly erroneous and perverse. Accordingly, the Award passed by the Labour Court dated 09.09.2015 passed in I.D.No.94 of 1981 is quashed.

29. Consequently, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn
To

The Presiding Officer,
I Additional Labour Court,
Chennai-600 104.

+1cc to Mr.S.Bazeer Ahamed, Advocate Sr.94668
+1cc to Mr.G.Purushothaman, Advocate Sr.93948

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W.P.No.39179 of 2015

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srg 13/12/2019