

OD-01

ORDER SHEET
WPO/1301/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

CYGNET INDUSTRIES LTD
-VS-
STATE OF WEST BENGAL & ORS.

BEFORE:
HON'BLE JUSTICE RAJASEKHAR MANTHA
DATE: 28TH NOVEMBER 2023.

APPEARANCE:
Mr. S. Majumder, Adv.; Mr. M.K. Seal, Adv.; Mr. S. Kundu, Adv., for petitioner.
Mr. S. Bhattacharyya, Adv.; Mr. B. Patra, Adv.; Ms. M. Roy Chowdhury, Adv., for
respondent no.2.
Ms. T. Samanta, Adv., for State.

THE COURT: 1. Affidavits-in-opposition and reply filed in Court are taken
on record.

2. The subject matter of challenge in this writ petition is an award dated
January 16, 2023, passed by the 1st Industrial Tribunal, Kolkata, in Case No.VIII-02/2011.

3. The matter has a chequered history. The charges against the respondent
workman were dishonesty under clause 16(a), wilful damage and loss to company's goods
under clauses 16(b)(iv) and (c) and act of subversive discipline under clause 16(b)(x) of the
Standing Orders.

4. The workman was found intentionally throwing away and destroying
marketable butt cakes of waste from his own dump to a drier truck. The butt cakes, being

leftovers after manufacture of rayon, were valuable assets of the company's manufacturing unit.

5. Prior to the chargesheet dated April 29, 2008, there were several instances where the respondent workman was warned and suspended for similar charges. In respect of the subject incident, however, the respondent workman was in fact charged with repeated misconduct. The respondent workman was thus a repeated offender.

6. The workman was found guilty by the company and dismissed from service after an inquiry.

7. The Tribunal originally found the charges against the petitioner unsubstantiated and set aside the penalty of dismissal. Reinstatement with 100% back wages was ordered.

8. The said award came to be challenged by the management before this court in W.P. No.4785 of 2021. The writ petition was dismissed with costs by a judgment and order dated April 6, 2021 of a Single Bench. On an appeal being preferred being FMA/692/2021, the order of the Single Bench was interfered with. The Division Bench of the High Court, however, concurred that the charge of dishonesty was not proved and consequently the said charge was remanded back for consideration afresh to the Industrial Tribunal. The findings in respect of the other two charges were found substantiated.

9. The Tribunal took up the reference afresh and passed the impugned award dated 16th January 2023. By the impugned award, the charge of dishonesty against the workman was found not proved.

10. What appears to this Court to be the principal reason therefor was that the only witness on the part of the management joined service in the year 2015 whereas the incident occurred in the year 2008.

11. The Tribunal addressed only the proportionality of the punishment since the workman had already superannuated by the year 2020. The Tribunal went on to award 70% of the back wages payable to the workman with effect from the date of termination dated November 11, 2009.

12. This Court finds that the charge nos.2 and 3, i.e. loss to the company as well as act of subversive indiscipline against the workman remained undisturbed and hence proved. Discipline amongst workmen is key to the functioning of the industry. When proven indiscipline also results in the loss to the company, the absence of any proof of actual loss or dishonesty.

13. If the punishment imposed by the Tribunal is sustained, the same would undoubtedly have an indirect effect of promoting indiscipline and loss to the employer. It could embolden other workmen to follow suit.

14. The principle of proportionality of punishment has been appropriately dealt with and settled in the cases of **Ranjit Thakur –vs- Union of India** reported in **(1987) 4 SCC 611** and **Union of India Vs G. Ganayutham** reported in **(1997) 7 SCC 463**. In normal circumstances, the punishment awarded by an employer or the Tribunal as in the instant case, is generally not interfered with by Courts. A slightly liberal approach is adopted in respect of punishments awarded to workmen.

15. In a number of cases, where the charges against a workman who has superannuated are found to be unsustainable, the Supreme Court itself has questioned the award of full back wages to a workman who has in fact not rendered any service during the period in consideration. In such cases, in lieu of reinstatement and/or post superannuation, the Supreme Court has at best allowed 50% of back wages. In the instant case the workman has been found guilty of subversive indiscipline and causing damage and loss to the employer.

16. In **Ranjit Thakur (supra)** at Para 25 it was held as follows:-

“Re contention (d):

25. Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In *Council of Civil Service Unions v. Minister for the Civil Service* [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:

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

17. In the **Ganayutham decision (supra)** at Para 13, 14, 15 and 34, it was held as follows:-

“The CCSU case (1985) and the expectation of future adoption of proportionality

13. The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 All ER 935] as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of *proportionality* which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

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

Lord Diplock explained “irrationality” as follows:

“By ‘irrationality’ I mean what can by now be succinctly referred to as ‘*Wednesbury* unreasonableness’. It applies to a decision which is so *outrageous* in its defiance of logic or of accepted moral standards that no *sensible person* who had applied his mind to the question to be decided could have arrived at it.”

(emphasis supplied)

14. In other words, to characterise a decision of the administrator as “irrational” the Court has to hold, on material, that it is a decision “so outrageous” as to be in total defiance of logic or moral standards. Adoption of “proportionality” into administrative law was left for the future.

Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1987 SCC (L&S) 1 : (1987) 5 ATC 113] (1987) refers to “proportionality”

15. The first decision of this Court in administrative law which referred to “proportionality” is the one in *Ranjit Thakur v. Union of India* [(1987) 4 SCC 611 : 1987 SCC (L&S) 1 : (1987) 5 ATC 113]. In that case the appellant was found guilty in court-martial proceedings and a punishment of dismissal from service and sentence of imprisonment was imposed as permitted by the Army Act. While quashing the said punishment on the ground of its being “*strikingly* disproportionate”, this Court observed: (SCC p. 620, para 25)

“25. ... The question of the *choice* and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the

offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to *shock the conscience* and amount in itself to conclusive evidence of bias. The *doctrine of proportionality*, as part of the concept of *judicial review*, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an *outrageous* defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.”

(emphasis supplied)

It is clear that *Ranjit Thakur* [(1987) 4 SCC 611 : 1987 SCC (L&S) 1 : (1987) 5 ATC 113] treated “proportionality” as part of judicial review in administrative law. But it will also be noticed that while observing that “proportionality” was an aspect of judicial review, the Court still referred to the *CCSU* [1985 AC 374 : (1984) 3 All ER 935] description of irrationality, namely, that it should be in outrageous defiance of logic if it was to be treated as irrational. *Ranjit Thakur* [(1987) 4 SCC 611 : 1987 SCC (L&S) 1 : (1987) 5 ATC 113] was followed in *Ex-Naik Sardar Singh v. Union of India* [(1991) 3 SCC 213 : 1991 SCC (Cri) 503 : 1991 SCC (L&S) 975 : (1992) 19 ATC 325] , again a case under the Army Act.

34. In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury* [(1948) 1 KB 223 : (1947) 2 All ER 680] or *CCSU* [1985 AC 374 : (1984) 3 All ER 935] norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi case* [AIR 1961 SC 418 : (1961) 2 SCR 343] that the Court might — to shorten litigation — think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In *B.C. Chaturvedi* [AIR 1961 SC 418 : (1961) 2 SCR 343] and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.) For the reasons given above, the case cited for the respondent, namely, *State of Maharashtra v. M.H. Mazumdar* [(1988) 2 SCC 52 : 1988 SCC (L&S) 436 : (1988) 6 ATC 876] cannot be of any help.”

18. Two amongst three charges have been found to have been proved against the workman. Applying the principles in the aforesaid decisions, this Court finds that the punishment awarded to the workman is not commensurate with the charges proved

against him. Even applying a liberal approach against the respondent workman, given the charges proved against him, this Court is of the view that the workman should not be entitled to more than 20% of the wages payable to him from November 11, 2009 till 2020, the date of actual superannuation.

19. In view of the above, there shall be a writ of Certiorari in respect of the impugned award of the Industrial Tribunal, dated January 16, 2023 to the extent indicated hereinabove.

20. The workman shall be paid back wages only to the extent of 20% of his total emoluments which he would have drawn had he been in service from November 11, 2009 till 2020.

21. Let the aforesaid dues be paid to the workman respondent within a period of three months from date.

22. With the above directions, the writ petition accordingly stands allowed and disposed of.

(RAJASEKHAR MANTHA, J)

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