

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-10774-2023 (O&M)
Date of Decision: 02.11.2023

M/S HPL ADDITIVES LIMITED

...Petitioner

Versus

SATYABIR AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vikas Singh, Advocate
for the petitioner.

Ms. Abha Rathore, Advocate
for respondent No.1/caveator.

HARSH BUNGER, J.

1. Petitioner (M/s HPL Additives Limited) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of Award dated 17.03.2023 (Annexure P-7) passed by the learned Industrial Tribunal-cum-Labour Court-III, Faridabad (here-in-after referred to as 'the Tribunal below'); whereby, the reference made under Section 10(1)(c) of the Industrial Disputes Act, 1947 (in short 'the 1947 Act') was answered in favour of workman (respondent No.1, herein) and an Award was passed to the effect that respondent No.1-workman be reinstated in service with continuity of service and further to pay back wages @ 50% from the date of demand notice of the workman till his reinstatement in service.
2. Briefly, respondent No.1-workman raised an industrial dispute regarding termination of his services, which was referred for adjudication by the appropriate government to the Tribunal below.

3. In the claim statement, respondent No.1-workman stated that he was appointed by the petitioner-Company on 01.06.2006 on the post of Helper against a vacant and regular post with an assurance that his services will not be terminated and his last drawn salary was Rs.5340.10 p.m. It was claimed by respondent No.1-workman that he performed his duties diligently without any break and completed more than 03 years – 02 months' continuous service with the petitioner-Company herein. Respondent no.1-workman alleged that with the sole intention to terminate his services, the petitioner-Company served a false and fabricated show cause notice dated 07.04.2009 and thereafter, issued a false warning letter dated 10.04.2009 to him and subsequently, issued a false, fabricated and arbitrary charge-sheet dated 25.05.2009; wherein false charges were levelled against him. Respondent no.1-workman further claimed that a false and fabricated domestic enquiry was initiated against him by levelling false allegations and the enquiry notice was issued to him. It was also claimed by respondent No.1-workman that the enquiry officer had prepared the enquiry report in an illegal and arbitrary manner. According to respondent No.1-workman, he joined the enquiry on 15.06.2009; however, he did not submit any reply and his signatures were obtained on the enquiry proceedings under pressure of the management and his false statement was prepared. Respondent no.1-workman claimed that the enquiry officer and the representative of the management had told him that the next date of enquiry was 20.06.2009; however, when he reached the office of the company on the said date, he waited for the Enquiry Officer and the Management representative but nobody turned up and rather, he was given the next date as 29.06.2009. As per respondent No.1-workman, on the said day, it was a strike in the

company; therefore, he was not allowed to enter the premises of the company and was given the next date of enquiry as 10.07.2009. It was stated that on the given date, the workman was not permitted to raise any question/query from the Enquiry Officer, Management Representative or anybody else and even he was given a further date of enquiry as 18.07.2009. On the said date i.e. 18.07.2009, respondent No.1-workman claimed that the Enquiry Officer obtained his signatures on blank papers and on 19.07.2009, when he went to attend his duties then he was not permitted to enter into the company premises by the Security Guard and he was told that the Management has suspended his services; however, no suspension letter was handed over to him. Respondent no.1-workman claimed that the enquiry was not conducted according to the principles of natural justice and false evidence was recorded in the enquiry and his services were terminated illegally and unlawfully on 19.07.2009.

With the afore-said plea, the respondent No.1-workman claimed reinstatement with continuity of service and full back wages.

4. The afore-stated claim of respondent No.1-workman was contested by the petitioner-Company by filing its written statement; wherein, a preliminary objection was raised that the reference was untenable as the workman was dismissed vide letter dated 31.08.2009 after a full-fledged domestic enquiry and there existed no industrial dispute, as defined under Section 2A of the 1947 Act. On merits, it was admitted that respondent No.1-workman was appointed by the Company on 01.06.2006 on the post of Helper and even the last drawn salary of the workman was not disputed. The stand of the petitioner-Company before the Tribunal below was that the workman was suspended on 06.05.2009 and thereafter, he was issued a

charge-sheet dated 25.05.2009; however, the workman did not submit any written explanation to the charge-sheet and thereafter, an enquiry was conducted against him according to the principles of natural justice; wherein, the workman duly participated; however, he was found guilty of the alleged misconduct in the enquiry. Subsequently, a show-cause notice was also issued upon the workman along with enquiry report; however, he did not submit any written explanation to the said show-cause notice; accordingly, he was dismissed vide letter dated 31.08.2009. It was denied by the petitioner-Company herein that the workman had worked upto 19.07.2009 as the workman was stated to have been suspended on 06.05.2009 and thereafter, he did not come present to mark his attendance during suspension. Accordingly, prayer was made for dismissal of the claim statement submitted by respondent No.1-workman.

5. From the pleadings of the parties, the following issues were framed :-

- “1. Whether the termination of workman is justified or not, if not then to what relief, he is entitled? OPW
- 2. Whether the enquiry conducted by respondent is not fair and proper? OPW”

The issue No.2 was ordered to be treated as a preliminary issue and in order to prove its claim, the respondent No.1-workman examined himself as WW1 and tendered the following documents :-

<i>Sr. No.</i>	<i>Exhibit/ Mark</i>	<i>Document</i>
<i>1</i>	<i>W1</i>	<i>Copy of appointment letter of Satyabir.</i>
<i>2</i>	<i>W2</i>	<i>Copy of pay slip for the month of April 2009.</i>
<i>3</i>	<i>W3</i>	<i>Copy of demand notice dated 22.03.2010.</i>
<i>4</i>	<i>Mark A</i>	<i>Copy of postal receipt.</i>

On the other hand, the petitioner-Company had also examined two witnesses i.e. MW1-Subhash Ahlawat and MW2-Ajay Yadav, DGM (HR) and relied upon the following documents :-

<i>Sr. No.</i>	<i>Exhibit/ Mark</i>	<i>Document</i>
<i>1</i>	<i>M1</i>	<i>Photocopy of enquiry proceedings</i>
<i>2</i>	<i>M2</i>	<i>Photocopy of report of postal department.</i>
<i>3</i>	<i>M3</i>	<i>Photocopy of show cause notice dated 10.08.2009.</i>
<i>4</i>	<i>M4</i>	<i>Photocopy of charge sheet dated 25.05.2009.</i>
<i>5</i>	<i>M1/1</i>	<i>Photocopy of letter dated 05.06.2009 regarding appointment of Enquiry Officer.</i>
<i>6</i>	<i>M1/2</i>	<i>Photocopy of enquiry report dated 01.08.2009.</i>
<i>7</i>	<i>MW2/1</i>	<i>Photocopy of suspension letter dated 06.05.2009.</i>
<i>8</i>	<i>MW2/2</i>	<i>Photocopy of postal receipt.</i>
<i>9</i>	<i>MW2/3</i>	<i>Photocopy of speed post receipt.</i>
<i>10</i>	<i>MW2/4</i>	<i>Photocopy of warning letter dated 10.04.2009.</i>
<i>11</i>	<i>MW2/5</i>	<i>Photocopy of show cause notice dated 07.04.2009.</i>
<i>12</i>	<i>MW2/6</i>	<i>Photocopy of postal receipt.</i>
<i>13</i>	<i>MW2/7</i>	<i>Photocopy of dismissal letter dated 31.08.2009.</i>
<i>14</i>	<i>MW2/8</i>	<i>Photocopy of standing orders as certified.</i>

6. It appears that vide Order dated 13.08.2021 (Annexure P-6) passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad, the preliminary issue (Issue No.2) was decided against the workman, by holding that the domestic enquiry conducted against the workman was fair and proper.

7. After considering the circumstances/evidence/material available on the record, the Tribunal below, vide impugned Award dated 17.03.2003

(Annexure P-7), answered the reference in favour of respondent No.1-workman, herein and further directed the petitioner-Company to reinstate the workman in service with continuity of service and to further pay him back wages @ 50% from the date of demand notice of the workman till his reinstatement in service by considering his last drawn salary as Rs.5350/- p.m.

8. In the afore-mentioned circumstances, the petitioner-Company has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner, while reiterating the facts of the case, argued that the impugned Award passed by the Tribunal below is without jurisdiction inasmuch as that in terms of Section 2A of the 1947 Act, a right has been given to the workman to file a claim statement before the Tribunal directly within a period of three years from the date of his/her termination. It is submitted that since the services of the workman were terminated on 31.08.2009 and therefore, the period of three years expired on 31.08.2012; accordingly, neither the workman could file an application under Section 2A of the 1947 Act nor the Tribunal had the jurisdiction to entertain any application or plea of the workman after a period of three years. Accordingly, it is submitted that the impugned Award is without jurisdiction and the same is liable to be quashed. Learned counsel for the petitioner-Company further argued that the Tribunal below has wrongly held that the award of punishment by the management was harsh. Learned counsel for the petitioner-Company submitted that in the instant case, it has come on record that the respondent No.1-workman was instigating the fellow workmen and was not obeying the orders of the superiors, which caused indiscipline. It was further submitted that the workman used to leave

the work without permission and he remained absent, which is an act of insubordination and major misconduct. Learned counsel for the petitioner further argued that it has also come on record that respondent No.1-workman had put two wooden pieces and a bolt in the screened material, which is an act of sabotage and despite giving a warning, the workman did not mend his ways and committed major misconduct and therefore; the punishment of dismissal cannot be called as a harsh punishment. Learned counsel for the petitioner further argued that once the Tribunal below has held the enquiry to be fair and proper; then the Award of punishment is within the domain of the management; therefore, the punishment awarded to respondent No.1 by the Management cannot be called as a perverse or harsh. Learned counsel for the petitioner also submitted that even otherwise, it is well established that grant of back wages in all cases, where termination is set aside is not a normal practice and the Tribunal below has arbitrarily passed the Award after a period of nine years, which is erroneous and contrary to law. It is lastly submitted that the Tribunal below has merely looked into the charges and has not taken into consideration the enquiry report; therefore, a prayer has been made for quashing of the impugned Award dated 17.03.2023 (Annexure P-7).

10. On the other hand, Ms. Abha Rathore, Advocate has appeared on behalf of respondent-workman/Caveator and has opposed the submissions made by the learned counsel for the petitioner by submitting that the impugned Award is well reasoned and justified in the peculiar facts and circumstances of the case and does not call for any interference. She further submitted that once the Tribunal below has exercised its discretion, then the same should not be interfered by this Court. It is submitted that the

entire act of the petitioner-Company in terminating the services of respondent No.1-workman was an afterthought with a sole object to victimize the respondent No.1-workman; accordingly, she prayed for dismissal of the instant writ petition.

11. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

12. As regards the first contention of the petitioner that the impugned award is without jurisdiction as in terms of Section 2A of the 1947 Act, the respondent No.1-workman had failed to submit his claim before the Tribunal below within a period of three years from the date of termination of his services; it is observed that in the instant case, the respondent No.1-workman has not exercised his right to file claim under Section 2A of the 1947 Act rather the respondent No.1-workman had raised an industrial dispute by serving a demand notice upon the petitioner-Company on 22.03.2010 i.e. within a short span from the date when his services were terminated and it is the State Government, which had made a reference of dispute pertaining to termination of services of respondent No.1-workman for adjudication to the Tribunal below under Section 10(1) (c) of 1947 Act. In ***Raghuvir v. G.M. Haryana Roadways Hissar, 2014(10) SCC 301***, it was held that there is no limitation for reference to Labour Court under Section 10 of Industrial Disputes Act 1947. It was held that words "***At any time***" mentioned in Section 10 of Industrial Disputes Act 1947 clearly define that law of limitation would not be applicable qua proceedings of reference under Section 10 of Industrial Disputes Act 1947. Operative part of Section 10 of Industrial Disputes Act 1947 is quoted in toto:-

"10. Reference of dispute to Boards, Courts or Tribunals-(1) Where the appropriate Government is of

the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing-

(a) Refer the dispute to a Board for promoting a settlement thereof.

(b) Refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry.

(c) Refer the dispute or any matter appearing to be connected with or relevant to the dispute if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication.

Therefore the aforesaid contention of the petitioner-company that the impugned Award is without jurisdiction, is rejected.

13. As regards the second contention of the petitioner that award of punishment was within the domain of Management and punishment awarded to respondent-workman cannot be said to be perverse or harsh; it is observed that the scope and ambit of Section 11A of the Industrial Disputes Act was considered by a Division Bench of this Court in the case of ***Punjab Anand Lamp Employees Union v. Punjab Anand Lamp Industry Ltd., 1996(3) SCT 56***; wherein it has been held as follows:-

“Till the insertion of Section 11A in the Act vide Industrial Disputes (Amendment) Act, 1971, the Labour Court and the Tribunals had limited jurisdiction to interfere with the action taken by the employer after holding disciplinary enquiry.

In Indian Iron and Steel Co. Ltd. v. Their Workmen, AIR 1958 Supreme Court 130; Punjab National Bank Ltd. v. Their Workmen, AIR 1960 Supreme Court 160; Management of Ritz Theatre (P) Ltd. v. Its Workmen, AIR 1963 Supreme Court 295 and M/s Hind Construction and Engineering Co. Ltd. v. Their Workmen, AIR 1965 Supreme Court 917, the Supreme Court had broadly laid down the area of interference by

the Labour Court/Industrial Tribunals while adjudicating the disputes relating to dismissal or discharge of workmen and held:-

"undoubtedly the management concerned has power to direct its own internal administration and discipline but the power is not limited and where a dispute arises, the Labour Courts/Industrial Tribunals have been given power to see whether the termination of service is justified and to give appropriate relief. In cases of the dismissal on misconduct, the Tribunal does not, however, act as a Court of Appeal and substitute its own judgment for that of the management. It will interfere (i) when there is lack of bonafide; (ii) when there is victimisation or unfair labour practice; (iii) when the management is guilty of basic error or violation of principles of natural justice, and (iv) when on material the finding is completely baseless or perverse."

In M/s Hind Construction and Engineering v. Their Workmen, (supra), the Supreme Court further observed:-

"The award of punishment for misconduct under the Standing Orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed the Tribunal should not interfere. The Tribunal is not required to consider propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever

impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimisation or unfair labour practice."

13. In order to confer wider powers on the Labour Courts/Industrial Tribunals, the Parliament amended the Act. The Statement of Objects and Reasons is incorporated in the Bill by which Section 11A was introduced, reads as under:-

*"In **Indian Iron and Steel Company Ltd. v. Their Workmen** (AIR 1958 Supreme Court 130 P. 138), the Supreme Court while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the service of a workman, has observed that in case of dismissal on misconduct the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice etc. on the part of the management."*

"The International Labour Organisation in its recommendation (No. 119) concerning termination of employment at the initiative of the employer, adopted in June 1963, has recommended that a worker, aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of

employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions if any, as it thinks fit or given such other reliefs to workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may warrant. For this purpose, a new Section 11A is proposed to be inserted in the Industrial Disputes Act, 1947."

*14. The ambit and scope of Section 11A came to be considered by the Supreme Court in **Workmen of M/s Firestone Tyre and Rubber Co. v. The Management**, AIR 1973 Supreme Court 1227. In that case, the Apex Court in the first place referred to the law laid down by the Court in respect of the jurisdiction of the Industrial Tribunal/Labour Court. It also referred to the statement of objects and reasons and proceeded to say:-*

"The object is stated to be that the Tribunal should have power in cases where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment."

Their Lordships further held that:-

"Even a mere reading of the section, in our opinion, does not indicate that a change in the law as laid down by this Court has been effected."

Their Lordships then took notice of the rival contentions raised on behalf of the employees and employers and then referred to some principles on interpretation of welfare legislation and held:

"that even after Section 11A has been inserted the employer and employee can adduce evidence regarding legality and validity of the domestic enquiry, if one had been held by an employer."

The Court further held :-

"that the Tribunal has to consider the evidence and come to the conclusion one way or the other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in an appropriate case and hold that no misconduct is proved."

The Court further observed:-

"It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may

also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately, it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion ensures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on par by Section 11A."

On the question of quantum of punishment their Lordships held that prior to Section 11A, the Tribunal had no power to interfere with the punishment imposed by the Management and it had to sustain the order of punishment imposed on the basis of proved misconduct unless it was harsh indicating victimisation, but, under Section 11A, even if misconduct is held to be proved, the Tribunal may be of the opinion that the order of discharge or dismissal for the particular act of

misconduct does not import punishment by way of discharge or dismissal and it can under such circumstances, award to the workman lesser punishment. In para 45 of the judgment their Lordships of the Supreme Court took notice of the departure made by the legislature in certain respects in the law laid down by the Supreme Court by observing that, for the first time power has been given to the Tribunal to satisfy itself whether misconduct is proved. This is particularly so even when findings have been recorded by an employer in an inquiry held. The Tribunal has also been given power to interfere with the punishment imposed by an employer. The proviso to Section 11A emphasizes that the Tribunal has to satisfy one way or the other regarding misconduct, punishment and the relief to be granted to the workman only on the basis of material on record before it. In para 48, their Lordships further observed that if a proper enquiry is conducted by an employer and a correct finding is arrived at regarding misconduct, even though, it now has power to differ from the conclusion arrived at by the Management it will have to give very cogent reasons in not accepting the view of the employer. In para 58 of the judgment, their Lordships again reiterated this position by making the following observations:-

"We have already expressed our view regarding the interpretation of Section 11A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the findings of misconduct except under certain circumstances. The position further was that the Tribunal has no jurisdiction to interfere

with the punishment imposed by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the power of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognised certain managerial rights in an employer. We have pointed out that this position has now been changed by Section 11A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him."

After the judgment in M/s Firestone Tyre and Rubber Co.'s case (supra), the Supreme Court examined the scope of power under Section 11A of the Act in a large number of cases and held:

"that the Labour Courts and Industrial Tribunals are empowered not only to examine the fairness of enquiry but also differ with the findings of the management in regard to the allegations levelled against the workman and also to award lesser punishment on the workman even if he is

found guilty of misconduct or allegation is held to be proved."

15. Even in respect of civil servants and the employees of the statutory bodies as well as agencies and instrumentalities of the State, the power of the Courts to interfere with the punishment awarded by a public employer is well recognised.

In Bhagat Ram v. State of Himachal Pradesh, 1983(2) SLR 626, the Supreme Court held :-

"Where the employer acted arbitrarily in awarding punishment the Court will be justified to draw an inference of violation of Article 14 of the Constitution of India."

In Union of India v. Tulsiram Patel, 1985-II LLJ 206, a Constitution Bench of the Supreme Court was dealing with the scope of Article 311(2) of the Constitution of India. The Court examined various aspects of the 'reasonable opportunity of hearing' embodied in Article 311 and observed "-

"Where the Court finds that the penalty imposed by the impugned order or punishment is arbitrary or grossly excessive or out of proportion to the offence committed or is not warranted by the facts and circumstances of the norms relevant to that particular Government service, the court will strike down the impugned order."

In Shankar Das v. Union of India, 1985-II LLJ 184, their Lordships of the Supreme Court were dealing with a case of an employee who was dismissed from service on the basis of conviction for a criminal offence. After observing that the competent authority did possess the power to make an order of punishment under Clause (a) of proviso of Article 311(2) of the Constitution, the Apex Court further observed:-

"But that power like every power, has to be exercised fairly, justly and reasonably. The right to impose penalty carries with it the duty to act justly."

*In **Ranjit Thakur v. Union of India, 1988-I LLJ 256** as well as in **Sardar Singh v. Union of India, AIR 1992 Supreme Court 417**, their Lordships of the Supreme Court applied the principles of proportionality even in the cases of members of Armed Forces and declared the orders of punishment to be arbitrary on the ground that the punishment was highly disproportionate. Some of the observations made in Ranjit Thakur's case are extremely relevant in the context and, therefore, it will be useful to refer to them. These are:-*

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-material. But the sentences 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 evidences 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 perversion are recognised grounds of judicial review."

*Although from the two decisions of the Supreme Court in **Union of India v. Parmanand, 1997(1) SCT 60 (SC)** and in **State Bank of India v. Samerander Kumar, JT***

*1994(1) SCR 217, some doubts were created about the powers of the High Courts etc. to interfere with the punishment awarded by the employer to the employees, the position has been clarified in recent decision in **B.C. Chaturvedi v. Union of India, JT 1995(8) SC 65** wherein the Supreme Court has held:*

"that the High Courts etc. do possess with the power to interfere with the punishment but this power should be exercised with care and circumspection."

*It is, thus, clear that a civil servant or an employee of a statutory body or agency or instrumentality of the State can challenge the termination of his service by directly approaching the High Court or Civil Court. The Court can not only declare the termination invalid on the ground of violation of the provisions of law or procedure established by law, but, can in an appropriate case interfere with the quantum of punishment awarded by the employer. If this be the position regarding a civil servant or an employee of an agency or instrumentality of the State in whose favour declaration of invalidity regarding termination of the service can be granted there is no reason or justification to accept a proposition of law which would deprive a workman of his right to seek remedy against the wrongful action taken by the employer. There does not appear to be any ground to differentiate cases of first category of employees, namely, civil servants etc. and the second category of employees i.e. the workmen on the issue to their entitlement to seek remedy against wrong done to them because all of them have been treated at par in so far as the Court's power to grant a declaration of nullity as regards the termination of their services is concerned. It is also necessary to bear in mind that in a recent decision i.e. **Rajasthan State Road Transport Corporation v. Krishan Kant, 1995(4)***

RSJ 374, their Lordships of the Supreme Court have, while commenting upon the power of the Government to make or not to make reference of the dispute, observed that this power is to be exercised by the Government to actuate the object of the enactment and the rule is to make a reference except where the dispute raised is totally frivolous on the face of it. Their Lordships have issued a command to the Parliament and the State Legislatures to make provisions in order to enable the workmen to approach the Labour Court/Industrial Tribunal directly without reference by the Government in the cases covered by Section 2A of the Act. This is another reason why it should be held that the Government cannot deprive a workman of his remedy under the Act by refusing reference.

From the above referred decisions of the Supreme Court and of this Court, the following propositions emerge:-

(1) While exercising power under Section 10 read with Section 12 of the Act, the power of the appropriate Government is administrative and not judicial or quasi-judicial.

(2) In exercising the power, the Government is only required to examine whether an industrial dispute exists or is apprehended. For this purpose, the Government can prima facie examine the matter to find out whether a dispute exists or not.

(3) The Government can refuse to make a reference only if it finds that the dispute sought to be raised is frivolous or vexatious or that the dispute sought to be raised, if referred for adjudication, will have grave adverse consequence on the entire industry in the region.

(4) In the garb of examination of prima facie issue of existence or apprehension of the dispute, the Government cannot delve into merits of the dispute and make an adjudication of the merits or demerits of the action of the employer. The Government cannot usurp the jurisdiction of the Labour Court/Industrial Tribunal to adjudicate the dispute.

(5) In cases of termination of the services of the workmen on the basis of an enquiry by the employer, the Government cannot decline to make reference on the ground that a proper domestic/departmental enquiry has been made by the employer or that the charge has been proved or that the allegation found proved is serious in nature or that the punishment awarded to the workman is just and proper. The Government also cannot refuse to make reference on the ground that the action taken by the employer does not suffer from lack of bona fides or that that the workman is guilty of a grave misconduct. All these matters lie in the exclusive domain of the Labour Courts/Industrial Tribunals which can exercise their power under Section 11A of the Act as interpreted in Workmen of M/s Firestone Tyre and Rubber Co. v. The Management (supra).

(6) The Government cannot refuse to make a reference merely because the employer pleads that the relations between the parties are strained. This is again an issue which has to be examined by the Labour

Court/Industrial Tribunals while considering the question of relief to be granted to the workman in case the action of the employer is found to be illegal or unjustified.

(7) The Government is duty bound to apply its mind to the demand made by the workman, the reply of the employer and the failure report and is under a statutory obligation to record reasons and communicate the same to the parties where it declines to make reference and if the Court finds that the reasons are extraneous or irrelevant, the decisions of the Government will be liable to be nullified...”

14. Keeping in view the afore-stated legal position, it would be apposite to examine the findings returned by the Tribunal below in the impugned Award dated 17.03.2023 (Annexure P-7) :-

“13. As already mentioned above, vide detailed order dated 13.08.2021, this Court has already decided issue no.2 (which was treated as preliminary issue) against the workman and in favour of the respondent wherein it was held that the domestic enquiry conducted by MWI Sh. Subhash Ahlawat against the workman was fair and proper. However, Section 11-A of the Act says as under :-

“Power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen – where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be, is satisfied

that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceedings under this section, the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

14. In case titled as **Management of Bharat Heavy Electricals Ltd. Vs. M. Mani &Anr. 2018 (supra)**, Hon’ble Supreme Court of India has held as under :-

17. In our opinion, once the Labour Court upheld the department enquiry as being legal and proper then the only question that survived for consideration before the Labour Court was whether the punishment of “dismissal” imposed by the appellant to the respondents was legal and proper or it requires any interference in its quantum.

18. In other words, the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge levelled against them and this, the Labour Court should have examined by taking recourse to the provision of section 11-A of the Industrial Disputes Act, 1947 (in short “the Act”) and the law laid down by this Court in the case of *The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.)*

Ltd. Vs. The Management &Ors., (1973) 1 SCC 813, It was, however, not done thereby rendering the order of Labour Court legally unsustainable.

In other two case laws relied upon by learned AR for respondent titled as Chief Executive Officer, District Co-operative Central Bank Ltd. Vs. K. Hanumantha Rao and another & Gurdev Singh Gill Vs.The Presiding Officer, Labour Court, Bathinda and another, the matter was not related to the Industrial Dispute Act, 1947. Therefore, those case laws are not of any help to the respondent.

15. *In the present case as per the charge sheet dated 25.05.2009 served upon the workman by the respondent, copy of which is Ex.M4, the following charges were levelled by the respondent against the workman:-*

(i) *That on 05.05.2009 at 7:00 P.M. you (workman) were on duty and then you left your work place without the permission of your supervisor and were roaming here and there in the plant. When your supervisor did not find you (workman) at the work place then he had searched you but you (workman) were not found.*

(ii) *That at about 8:30 P.M. your supervisor had noticed that you (workman) had left the work of screening of Kinox-10 batch No.2009/76 intermittently and roaming here and there suspiciously. When your supervisor had asked you the reason for roaming in that way then you (workman) did not give any reply.*

(iii) *That at 11.00 p.m. after completion of your duty you (workman) did not inform to your supervisor about the progress of the screening done by you and left from the company.*

(iv) *That the workman who had started doing the screening immediately after you had informed to have found a two inch wooden piece and bolt from the material screened by you (workman). It appears that you (workman) had put*

those articles in the screened material while leaving after doing your duty.

A careful perusal of the charge sheet dated 25.05.2009 (Ex.M4), it reveals that the charge nos.1 & 2 are regarding leaving of work place by the workman during duty time without permission of his supervisor. There is no allegation of misbehavior with the supervisor by the workman. So far as the, charge no.3 is concerned, the same is regarding, not informing the progress of screening done by the workman to his supervisor while leaving company after duty time. So far as, this allegation is concerned, nothing has been brought on record by the respondent that it was duty of the workers to give the progress details of the screening done by them to their supervisor daily before leaving the company after duty time. No written directions/order in this regard has been produced by the respondent. Charge no.4 against the workman is that the two inches wooden piece and a bolt were found from the material screened by him. It appeared that workman had put those articles in the screened material while leaving after duty. There was no allegation against the workman that he had intentionally put those articles in the screened material. Nothing has been brought on record that anyone had seen workman putting any such articles in the screened material. Charge No.4 is only on the apprehension basis.

16. Further, according to MW2 Ajay Yadav the previous record of workman was not satisfactory. Previously workman was also issued a warning letter and explanation letter. Ex.MW2/5 is the show cause notice dated 07.04.2009 issued to workman wherein it is mentioned that a complaint has been received against him that he disobeys his supervisor and also instigates his co-workers against the company. Thereafter the warning letter dated 10.04.2009 (Ex.MW2/4) was issued to him. However nothing has come on record that who had made such complaint against the workman and how

& in what manner he disobeyed his supervisor and instigated the other co-workers. It is also mentioned that on which date, time and place workman allegedly disobeyed his supervisor and instigated his co-workers. Even the names of co-workers who were allegedly instigated by workman have not been mentioned in the show cause notice Ex.MW2/5. Allegations against the workman were totally vague. In the absence of any cogent and satisfactory evidence, it is not proved that the previous record of the workman was not satisfactory.

17. Keeping in view the entire facts and circumstances, this Court is of the considered opinion that the punishment of the termination from the service awarded to the workman by the management of the respondent company is quite harsh and disproportionate to the gravity of the charges levelled against him. This Court considers that punishment of stoppage of one increment of the workman for a period of one year instead of dismissing him from the service would be justified in this case. Respondent has not disputed the date of appointment and the monthly salary of workman. Therefore, respondent is liable to be directed to reinstate the workman in service with continuity of service with 50% back wages by considering his salary as Rs.5,340/- . Respondent shall pass an order regarding with-holding of one annual increment of the workman for a period of one year. Accordingly issue no.1 is decided in favour of workman and against the respondent.

18. As a sequel to the findings as returned by this Court on above issues under adjudication, as discussed in the preceding paragraphs, the present reference is hereby answered in favour of the workman and against the respondent and an award is passed to the effect that the respondent is directed to reinstate the workman in service with continuity of service and to pay back wages % 50% from the date of demand notice of the workman till his reinstatement in service by considering his last drawn salary

as Rs.5,350/- per month. The respondent is directed to reinstate the workman and to pay the arrears of back wages within a period of 3 months from today, failing which the respondent shall pay interest @ 7% p.a. on the arrears of back wages from the date of publication of this award till realization of the amount. Respondent shall pass an order withholding of one increment of the workman for a period of one year. Copies of award be sent to the authorities concerned and the file be consigned to record room after due compliance.”

15. A perusal of the aforesaid findings returned by the Tribunal below would indicate that the Tribunal below, in exercise of the powers conferred upon it under Section 11A of the 1947 Act, has considered every charge levelled by the petitioner-Company against respondent No.1-workman. It has been observed that as far as charges No.1 and 2 are concerned, it was concerning leaving of work place by the workman during duty time without permission of his supervisor; however, there is no allegation of mis-behaviour with the supervisor by the workman.

As regards the charge No.3 that the workman did not inform his superior about the progress of the screening done by him, it has been observed by the Tribunal below that there was no material on record to indicate that it was the duty of the workman to give the progress details of the screening done by the workmen to their supervisor daily before leaving the company after duty time. It has been held that no written direction/order in this regard has been produced by the petitioner-company.

As regards charge No.4 that two inch wooden piece and a bolt were found from the material screened by the respondent No.1-workman, it has been observed that the workman appears to have put those articles in the screened material while leaving after duty and there was no allegation

against respondent No.1-workman that he had intentionally put those articles in the screened material. The Tribunal below further held that nothing has been brought on record that anyone had seen respondent No.1-workman putting any such article in the screened material. Accordingly, the Tribunal below held that Charge No.4 was only on the basis of apprehension.

As regards the contention raised before the Tribunal below that the previous record of the workman was also not satisfactory, the Tribunal below has returned a finding that nothing has come on record that who had made complaints against respondent No.1-workman and how and in what manner, the workman had disobeyed his superiors and instigated the other co-workers. It is further held that the date, time and place when the respondent No.1-workman is alleged to have disobeyed his superiors or instigated his co-workers, was also not forthcoming on the record and thus, the allegations against respondent No.1-workman were found to be totally vague.

16. Keeping in view the entire facts and circumstances of the case, the Tribunal below has considered the proportionality of the punishment imposed upon respondent No.1-workman and held that the punishment of termination from service awarded to respondent No.1-workman by the petitioner-Company was harsh and disproportionate to the gravity of the charges levelled against him. Accordingly, the Tribunal below held that the punishment of stoppage of one increment of the workman for a period of one year instead of dismissing him from service, would be justified in this case.

17. I have gone through the impugned Award dated 17.03.2023 (Annexure P-7) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad and also the discretion exercised by it;

however in the light of the legal position indicated above and also the peculiar facts of this case; I do not find any illegality in the discretion exercised by the Tribunal below by considering that the punishment of stoppage of one increment of the workman for a period of one year instead of dismissing him from the service would be justified in this case.

18. Furthermore, the peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in ***Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 Supreme Court 477***, wherein Hon'ble Supreme Court held as under :-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. 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 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 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.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in

ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

19. In view of the foregoing discussion, finding no merit in the

instant writ petition, the same is accordingly dismissed.

20. All pending application/s, if any, shall also stand closed.

November 02, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No