

**CWP No. 2404 of 1997 (O&M)****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****(218)****CWP No. 2404 of 1997 (O&M)****Date of Decision : 10.02.2025****M/s J.M.P. Industries, Focal Point, Jalandhar****...Petitioner****Versus****The Presiding Officer, Labour Court, Jalandhar and another****...Respondents*****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. Animesh Sharma, Advocate and
Mr. Akashdeep Singh Sidhu, Advocate for the petitioner.

Mr. Ranvir S. Chauhan, Advocate for respondent No. 2.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is against the Award dated 26.11.1996 (Annexure P-7) passed by the Labour Court.

2. Learned counsel for the petitioner submits that the respondent-workman had remained absent from performing his duty and keeping in view the said absence, he was dismissed from service on 28.08.1987 but Labour Court vide its Award has stipulated that although, the said termination is valid but the same is liable to be set-aside on the ground that the same is disproportionate to the charges alleged and proved.

3. Learned counsel further submits that the view taken by the Labour Court that even the act of absence of the employee from his duty should not have led to dismissal along with the direction to reinstate the said



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employee with 1/3rd back wages is incorrect and the said Award is liable to be set-aside.

4. Learned counsel for the respondents submits that the workman was not being allowed to join starting from 28.01.1987 as a result of which, the respondent-workman raised a dispute before the competent authority under the Industrial Disputes Act, 1947 and during the pendency of the litigation before the authority concerned vide order dated 28.08.1987, he was dismissed from service. Learned counsel for the respondent-workman submits that once the Tribunal has expressed its view that the punishment is excessive and disproportionate to the charges alleged and proved, no interference is called for by this Court and the present petition may kindly be dismissed.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. As per the settled principle of law settled by the Hon'ble Supreme Court of India in CIVIL APPEAL NO. 219 OF 2023 (@ SLP(C) NO. 7645 OF 2018) titled as ***Union of India and Ors. versus Const Sunil Kumar***, decided on 19.01.2023, the punishment imposed upon an employee can only be modified by the Court in case the same is found to be shockingly disproportionate to the charges alleged and proved. The relevant paragraph of the said judgment is as under :-

“6.2 Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is



*disproportionate to the gravity of the wrong. In the case of **Surinder Kumar** (supra) while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of **Union of India Vs. R.K. Sharma; (2001) 9 SCC 592** that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution.”*

7. In the present case, it is a conceded position that the respondent-workman was proceeded against by the petitioner qua the misconduct by concluding departmental proceedings and consequently, in the departmental enquiry in which the Workman did not associate the charge of absence from duty was duly proved, the impugned order terminating the services was passed on 28.08.1987 by the Punishing Authority.

8. Keeping in view the facts and circumstances of this case, this Court is of the opinion that the Labour Court should not have interfered in the order passed by the employer as, an employee who remains absent from his duty constitutes as a major misconduct and has to be treated as such. An employee who does not attend his/her duties, directly affects the employer not only qua the output required in the Industry but also for smooth functioning of the establishment. Hence, keeping in view the facts and circumstances of the present case, especially when, the punishment imposed

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upon the respondent-employee was not shockingly disproportionate to the charges alleged and proved, the view taken by the Labour Court that the punishment was disproportionate despite proving the allegation of absence, cannot be sustained.

9. It may be noticed that the impugned Award, qua the punishment imposed, detailed findings have been recorded that the same has been imposed after following due process of law. The said finding is not under challenged by the Workman. Once, the finding that the punishment has been imposed after following due procedure, changing of the punishment to the satisfaction of the Labour Court, especially when the same was not shockingly disproportionate to the charges alleged and proved, cannot be sustained in the eyes of law.

10. Thus, in view of all facts and circumstances mentioned here-in-before, the impugned Award dated 26.11.1996 (Annexure P-7) is set-aside accordingly.

11. Pending miscellaneous application, if any, also stands disposed of.

February 10, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No