

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**WPA 7792 of 2025**

**M/s. Zydus Health Care Ltd.**

**Vs.**

**The State of West Bengal & Anr.**

|                                 |   |                                                                                       |
|---------------------------------|---|---------------------------------------------------------------------------------------|
| <b>For the Petitioner</b>       | : | Mr. Anurag Lakhotia,<br>Mr. Asish Kumar Das,<br>Mr. Sunny Nandy,<br>Md. Baharuzzaman. |
| <b>For the Respondent no. 2</b> | : | Mr. Soumya Majumdar,<br>Mr. Suvodip Bhattacharjee,<br>Mr. Balaram Patra.              |
| <b>For the State</b>            | : | Mr. Susanta Pal,<br>Ms. Ananya Neogi.                                                 |
| <b>Hearing concluded on</b>     | : | 22.07.2025                                                                            |
| <b>Judgment on</b>              | : | 19.08.2025                                                                            |

**Shampa Dutt (Paul), J.:**

1. The writ application has been preferred challenging an award passed by the learned 7<sup>th</sup> Industrial Tribunal, in Case No. 15 of 2020, under Section 10(1B)(d) of the Industrial Dispute Act, 1947.
2. The petitioner's case is that it is a company incorporated under the Companies Act, 1956 and is running a Pharmaceutical Business.

- 3.** The petitioner states that the respondent no. 2 Subir Kumar Bandyopadhyay, the private respondent herein was a Medical Representative of the petitioner, at whose instance an industrial dispute was espoused regarding dismissal of his service on 04.06.2020 before the Conciliation officer and the same having not ended in a settlement, the Respondent No. 2 invoked the provision of section 10(1B) of the Industrial Disputes Act, 1947 and on the basis of the pendency certificate issued by the conciliation officer, he made an application before the Learned Seventh Industrial Tribunal.
- 4.** The petitioner further states that the learned tribunal passed an erroneous award on 17.01.2025 by acting in an arbitrary manner.
- 5.** It is the case of the petitioner that during the pandemic Covid-19 lockdown, the Management of the petitioner through its HR and business, had come up with the tasks, which the complete pan-India based sales team including the respondent No. 2 were directed to do. These tasks were to be done from home only, which included taking up training modules on Frontline 2.0. chemist mapping.
- 6.** It is stated that each and every sales team, which is pan-India based had performed these tasks except the respondent no. 2 and few employees employed in West Bengal Region, who were led by the respondent No. 2 as their leader.
- 7.** The petitioner issued a show cause notice to the respondent no. 2 for such alleged misconduct and considering the Covid-19 situation and the conduct of the respondent no. 2 which was in defiance of

the direction of the management and the documents in support, which allegedly showed that the respondent no. 2 was the misguider and instigator of other employees, the management was constrained to terminate the services of the respondent no. 2 and sent the order of termination vide email dated 04.06.2020.

**8. The respondent no. 2 was dismissed from service vide Chargesheet-cum-Order of Dismissal dated 04.06.2020 as it was the Covid-19 pandemic.**

**9.** Vide the award under challenge, the learned 7<sup>th</sup> Industrial Tribunal, Kolkata passed an award and on a contested hearing decided the application under Section 10(1B)(d) of the Industrial Dispute Act, on the following findings:-

*“.....The OP/Company has also failed to demonstrate its stand of preliminary enquiry. The OP/Company has failed to bring any iota of evidence in support of its version as to preliminary enquiry. No preliminary enquiry report has been placed before this Tribunal. The OP/Company also failed to aver and/or depose that it supplied any copy of such alleged preliminary enquiry to the applicant/workman. In view of the settled law as to preliminary enquiry, such alleged preliminary enquiry as alleged by OP/Company is violative of the principles of natural justice and holds no water in the eye of law and is in teeth of the settled law on this aspect.*

*Thus, this Tribunal has no hesitation to conclude from the evidence adduced on behalf of OP/Company that the OP/Company has failed to prove any of the charges*

leveled by the OP/Company in Exhibit-23 being styled as "Chargesheet-cum-Order of Dismissal".

The applicant/workman has averred and deposed that the applicant/workman has not been in any gainful employment elsewhere since his said illegal retrenchment and is entitled to full back wages with reinstatement with consequential benefits and prayed for continuity of service.

In view of the aforesaid facts and circumstances and the settled position of the law, this Tribunal finds that the applicant/ workman has been able to prove his case by cogent and consistent evidence that his alleged termination vide letter dated 04.06.2020 is bad, illegal and unjustified and is liable to be set aside and that the applicant/ Workman is entitled to reinstatement with full back wages alongwith consequential reliefs and the services of the applicant/workman be deemed to be continuous service without any break.

.....

Hence, it is

### **ORDERED**

that the instant case being No. 15/2020 u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is allowed on contest with **costs of Rs. 5,00,000** (Rupees Five Lacs only) against the OP/Company. The letter of chargesheet cum Order of dismissal dated 04.06.2020 (Exhibit-23) is set aside being bad, illegal and unjustified.

The applicant/ workman is entitled to be reinstated in service with effect from 04.06.2020 with full back wages alogwith all other consequential benefits thereto arising out of such reinstatement and continuity of

*service and the service of the applicant/ workman shall be deemed to be continuous service without any break.*

*Since the date of superannuation of the applicant/ workman is 31.03.2024 which has crossed during the pendency of the instant case, the applicant/ workman is deemed to have been reinstated in service with effect from 04.06.2020 with full back wages alongwith all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/ workman shall be deemed to be continuous service without any break. The applicant/workman stands superannuated/retired on 31.03.2024.*

*The OP/Company is directed to pay full back wages alongwith all other consequential benefits thereto arising out of such reinstatement till the date of superannuation of the applicant/ workman i.e. till 31.03.2024 and also other benefits being paid to other workman/ workmen on their retirement including benefits paid under various beneficial, welfare and/or benevolent schemes of the OP/company. The OP/Company is further directed to ensure that the applicant/ workman is not deprived of the annual increments which fell due from time to time since 04.06.2020. The OP/Company is also directed to ensure payment of all other retiral benefits to the applicant/workman including Provident Fund, Gratuity, Pension etc as applicable in the OP/Company.*

*The OP/Company is also directed to further pay a **sum of Rs. 4 Lac (Rupees Four Lacs) as compensation** to the applicant/ workman for the applicant's mental agony and unnecessary harassment due to illegal, unlawful and unjust termination of his service by the OP/Company.*

*The OP/Company is also directed to pay all the dues and outstanding as directed by this Tribunal with interest @ 10% per annum within thirty days from the date of this order.....*

**Sd/-  
7<sup>th</sup> Industrial Tribunal  
Kolkata”**

- 10.** Written notes has been filed by the petitioner reiterating their case as made out in the writ application and it has been further argued:-

*“.....In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee.....”*

- 11.** The petitioner has relied upon the following judgments:-

- i. The workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. vs The Management and Ors., (1973) 1 SCC 813.**
- ii. State of Uttarakhand & Ors. vs Sureshwati, (2021) 3 SCC 108.**
- iii. TATA Oil Mills Co. Ltd. vs Workman & Anr., 1962 SCC OnLine SC 5.**

- iv. ***Kurukshetra University vs Prithvi Singh, (2018) 4 SCC 483.***
  - v. ***Anand Cinema, Jabalpur vs Mohan Tiwari and Anr., 1992-II L.L.N.301, Madhya Pradesh High Court.***
  - vi. ***J. K. Synthetics Ltd. vs K.P.Agrawal & Anr., (2007) 2 SCC 433.***
  - vii. ***OM Pal Singh vs Disciplinary Authority & Ors., (2020) 3 SCC 103.***
  - viii. ***U.P. State Road Transport Corpn. vs Subhash Chandra Sharma & Ors., (2000) 3 SCC 324.***
  - ix. ***State Bank of India vs Chandra Govindji (KM.), (2000) 8 SCC 532.***
- 12.** On hearing the parties and on perusal of the materials on record, the relevant extract of the Chargesheet-cum-Order of Dismissal is reproduced herein:-

*“.....The world was hit by **pandemic of Covid-19** and our country is also not an exception to the same. On 24/03/2020 the **national lock down** was declared by the Central Government as a result of which entire activity within the country was at standstill. While issuing the guidelines the manufacturing of medicines and other allied essential services were allowed and 'work from home' was encouraged.*

*Looking at the prevailing conditions and considering the safety and security of employees, the Zydus management issued a circular dated 20/03/2020 for working from home which was received by you. Management issued similar circulars from time to time. You were in receipt of all those circulars of work from home. In spite of receipt of circulars on work from home, since you were not working from home, your Area Business Manager during the course of routine telephonic conversation explained to you the necessities/requirements of 'work from home' as per circulars but you continued with your defiant attitude.*

*.....*

*It is a matter of regret that, in spite of clear cut instructions to participate in said activities while at home, as a part of work from home, you deliberately did not participate in the same. Not only this but you instigated and advised your colleagues/ co-employees for not participating or not adhering to the management's instructions as per above referred circulars. As a result of which many employees did not participate.*

*It is also observed that and **management has reason to believe** that you had instructed, advised and instigated your colleagues to write derogatory emails to the management. As a result of which management received more than 100 emails having Identical/similar contents.*

*It is also observed that, in the recent past i.e. from December 2019 to March 2020 at your instructions, instigation and advice the obstructions and hindrance was caused in normal field working in West Bengal.*

*It is also noticed that, based on the Government orders when management tried to restore the field work in green & orange zones by adhering to the guidelines issued by Government authorities, you instigated and advised your colleagues not to resume field work by alleging that the conditions are not conducive. Whereas, other employees of Zydus in other divisions had resumed their field work.*

*The aforesaid acts on your part amounts to serious acts of misconduct as under:-*

- a) Willful insubordination of lawful and reasonable work instructions of management;***
- b) Instigation to other employees for mass disobedience;***
- c) Act subversive of discipline and/or good behavior;***
- d) Tarnish the image of organization, Human Resource Department and senior officials of the company.***

*In the normal course, management would have conducted an enquiry in respect of the above charges, but in view of current scenario of Covid-19 it is not possible to conduct a formal enquiry. Besides, your continuation in the*

*employment is also detrimental to the interest and discipline of the organization and hence management has decided to dispense with the enquiry.*

*Accordingly your services stand terminated by way of dismissal with immediate effect for your above stated acts of gross misconduct. In the event you decide to challenge your termination, management reserves its right to prove the aforesaid charges on merits before the appropriate Court and/or Authority along with your unsatisfactory past service record.*

*You are advised to hand over all company's property in your possession to your reporting manager so as to enable the management to settle your full and final account.*

*For Zydus Healthcare Ltd*

**Sd/-  
Deputy General Manager - HR Department”**

**13. It appears from the materials on record that:-**

- i.** Admittedly the dismissal of the respondent no. 2 was done during the Covid-19 pandemic period.
- ii.** The respondent no. 2 joined the petitioner company on 01.08.1985 and was confirmed in service on and from 01.01.1986, when he was designated as Senior Field Officer.
- iii.** The respondent no. 2's case is that he being an active member of the trade union having raised his voice against illegal

activities and unfair labour practice was subjected to harassment by the management which subsequently led to his illegal dismissal/termination.

- iv. The respondent no. 2 was transferred to various places during his service period, which he joined and performed his duties and he superannuated on 31.03.2024.
- v. **At the time of his termination, the petitioner had put in about 35 years of service.**
- vi. From the **Chargesheet-cum-Order of Dismissal**, it appears that as the respondent no. 2 allegedly did not participate in the online training programme conducted during the Covid-19 pandemic as part of work from home and having allegedly instigated other colleagues and co-employees to also not co-operate with the company, he was dismissed from service on and from 4<sup>th</sup> June, 2020, on the following grounds which as per the management amounts to **serious acts of misconduct:-**

- a) Willful insubordination of lawful and reasonable work instructions of management;*
- b) Instigation to other employees for mass disobedience;*
- c) Act subversive of discipline and/or good behavior;*
- d) Tarnish the image of organization, Human Resource Department and senior officials of the company.*

- 14. **The learned tribunal** considering the argument of the parties and the evidence adduced and the various documents produced as

Exhibits by the company and the judgments relied upon held that the tribunal had territorial jurisdiction as the letter of termination was received by the respondent no. 2 in Kolkata (Exhibit 23) and by passing a well reasoned order, relying upon several judgments rightly held that the **tribunal had territorial jurisdiction** to consider the application filed under Section 10(1B)(d) of the Industrial Dispute Act.

15. Regarding maintainability, the tribunal rightly decided that the respondent no. 2 was covered under the definition of Section 2(s) of the Industrial Dispute Act.
16. The learned Tribunal was also of the view that a Chargesheet-cum-Order of Dismissal on the face of it is not part of labour jurisprudence. **It is the view of the tribunal that in order to travel from the stage of Chargesheet to order of dismissal the company was bound to provide opportunity to the workman to meet the charges leveled against the applicant/workman.**
17. Admittedly, no domestic enquiry or disciplinary proceeding was held. It was countered by the Opposite Party/Company, pleading the Covid-19 pandemic, but the company went ahead to inflict “major punishment” of “dismissal from service” of a workman who had put in 35 years of service, without conducting a formal enquiry or even providing an opportunity to the petitioner to defend himself, **in view of the fact that the chargesheet included the order of dismissal.**

18. Such an order is usually invalid because it denies the employee a reasonable opportunity to be heard.

It breaches the principles of natural justice, especially audi alteram partem ("hear the other side").

**A chargesheet is meant to initiate disciplinary proceedings, not conclude them.**

**The procedure as per law flows like this:-**

Chargesheet → Employee's reply → Domestic Enquiry → Enquiry Report → Show cause notice on proposed penalty → Final order imposing punishment.

19. In the present case, the workman served the company for 35 years being also involved in trade union activities. Being dismissed in this manner is **clearly an unfair labour practice**, thus coming within the fifth schedule to the Industrial Dispute Act, more specifically **under clause 5 to the fifth schedule.**

20. In ***Sur Enamel and Stampingworks (P) Ltd vs Their Workmen, 1963 AIR 1914***, the Supreme Court held:-

*".....In our opinion, it would be a misuse of the words to say that this amounted to holding of proper enquiry it has been laid down by this Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This*

*attitude is wholly misconceived. **An enquiry cannot be said to have been properly held unless,***

*(i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined--ordinarily in the presence of the employee-in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report.....”*

21. It appears that a domestic enquiry was not only dispensed with but **a short cut method of a Chargesheet-cum-Dismissal letter** which is totally against the principle of natural Justice, was issued to the workman.
22. In spite of the fact that the world was passing through the severe effects of Covid-19 pandemic, the petitioner hurriedly dismissed the employee without a proper dismissal procedure. This only goes to show that **the defence of Covid-19 pandemic and the said situation was used as an opportunity to dismiss the employee without affording an opportunity of facing a domestic enquiry.**
23. An employee who had put in 35 long years of service and holding a senior position, was subjected to such prejudice and abuse of the process of law during a period, when he could not defend himself. This conduct on the part of the petitioner company, which appears to be a multinational, prima facie shows that **the company was in a hurry** to dismiss the employee, he prima facie being an active member of the trade union.

24. The documents placed before the Court and the tribunal to substantiate the petitioner's argument that the respondent no. 2 employee instigated the other workers not to participate, has not satisfied this Court, as the same also appears to be part of their defence regarding the Chargesheet-cum-Order of Dismissal of the employee.
25. It appears from the Chargesheet-cum-Order of Dismissal that online training was being conducted which the respondent no. 2 and other employees were required to participate but having not done so, the company allegedly has faced obstruction and hindrance in normal field working in West Bengal.
26. Even if, this is considered to be insubordination, indiscipline, it is not sufficient or act of such aggravated nature so as to lead to dismissal of an employee who had put in 35 years of service, without any formal enquiry during the Covid-19 pandemic period.
27. **There was no such hurry to dismiss the employee during the severe pandemic Covid-19 lockdown.**
28. Accordingly, the major punishment of dismissal without following the normal procedure/norms is totally disproportionate to the prima facie alleged misconduct of the employee.
29. From the evidence before the tribunal the petitioner/company could not prove any instigation on the part of the employee/respondent no. 2, nor does this Court find any materials on record to substantiate the charge no. D, which is that the respondent no. 2 has tarnished the image of the organization etc.

30. In ***Airports Authority of India vs Pradip Kumar Banerjee***, in ***Civil Appeal No(s). 8414 of 2017, decided on February 04, 2025***, the Supreme Court held:-

**“32.** *It is trite law that in disciplinary proceedings, it is not necessary for the Disciplinary Authority to deal with each and every ground raised by the delinquent officer in the representation against the proposed penalty and detailed reasons are not required to be recorded in the order imposing punishment if he accepts the findings recorded by the Enquiry Officer. Our view stands fortified by the decision of this Court in **Boloram Bordoloi v. Lakhimi Gaolia Bank, (2021) 3 SCC 806**, wherein it was held:-*

*“11. . . . Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. . . .”*

**33.** *All that is required on the part of the Disciplinary Authority is that it should examine the evidence in the disciplinary proceedings and arrive at a reasoned conclusion that the material placed on record during the course of enquiry establishes the guilt of the delinquent employee on the principle of preponderance of probabilities. This is precisely what was done by the Disciplinary Authority and the Appellate Authority while dealing with the case of the respondent.*

**39.** *In the wake of the above discussion, we hold that the Division Bench, while exercising the intra-court writ appellate jurisdiction clearly erred in interfering with the **concurrent findings recorded by the Disciplinary Authority, the Appellate Authority** as affirmed by the learned Single Judge.”*

31. The Supreme Court in the ***State of Rajasthan and others – vs – Heem Singh, in Civil Appeal No. 3340 of 2020*** decided on 29th October, 2020 held :-

**“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in**

***maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum.*** Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. ***To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity.*** But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

- 32.** Thus, a writ Court has the jurisdiction in such proceedings to only ensure that the person aggrieved has had a fair trial and that principle of natural justice was followed while deciding the case and as to whether the punishment given is proportionate to the offence committed. A writ Court cannot go into the details of evidence recorded and as to the discrepancies of the said finding and proceedings conducted by a disciplinary authority.
- 33.** In ***Central Industrial Security Force and Ors. Vs. Abrar Ali, (2017) 4 SCC 507***, the Supreme Court held:-

***"13.*** Contrary to findings of the Disciplinary Authority, the High Court accepted the version of the Respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the Disciplinary Authority that the Unit had better medical facilities which could have been availed by the Respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamount to re-

appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.

**14. In *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya* reported in (2011) 4 SCC 584, this Court held as follows:**

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. **(Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749: 1996 SCC (L&S) 80: (1996) 32 ATC 44], Union of India v. G. Ganayutham [(1997) 7 SCC 463: 1997 SCC (L&S) 1806], Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762: 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil.**”

**15. In *Union of India & Ors. v. P. Gunasekaran* reported in (2015) 2 SCC 610, this Court held as follows:**

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as

*an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the inquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. **The High Court can only see whether:***

- (a) the inquiry is held by a competent authority;***
- (b) the inquiry is held according to the procedure prescribed in that behalf;***
- (c) there is violation of the principles of natural justice in conducting the proceedings;***
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;***
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;***
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;***
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;***
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;***
- (i) the finding of fact is based on no evidence.***

*13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the inquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

**16.** *We are in agreement with the findings and conclusion of the disciplinary authority as confirmed by the appellate authority and revisional authority on Charge 1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the respondent had intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of gross misconduct and the respondent deserves to be punished suitably.*

**19.** *Though we are of the view that the High Court ought not to have interfered with the order passed by the Disciplinary Authority, the penalty of dismissal from service is not commensurate with delinquency. The Respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the Appellants that the Respondent is entitled for pension as he has completed 10 years of service. In order to avoid any*

***controversy, we direct that the Respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period.”***

34. **The employee herein**, who had put in 35 years of service, in the petitioner company was terminated from service by a charge sheet cum dismissal letter, during the Covid pandemic (04.06.2020), without there being a scope of placing the employees case/defence.
35. **Date of dismissal (04.06.2020) was during the period of the 1<sup>st</sup> wave of the pandemic which was very severe causing innumerable deaths and immense trauma to the members of the public.**
36. The pandemic created havoc in the lives of all, causing loss of near and dear ones, with no known treatment.
37. **It was at this stage**, the company in the most insensitive manner, dismissed the employee from service by not following the norms of dismissal, **using the excuse of Covid pandemic.**
38. The case of the petitioner/company that the respondent/employee was instigating other employee, causing inconvenience to the petitioner/company has not been substantiated by any materials/evidences, thus has no merit.
39. As per Article 14 & 21 of the Constitution, any termination without providing a chance to be heard is arbitrary and unjust.

Under Section 25-F, retrenchment without notice, notice pay, or enquiry is illegal.

**MHA Guidelines (March-April 2020) directed/advised all employers (especially private establishments) not to terminate or reduce wages during lockdown.**

**Thus termination contrary to these directions is illegal and in violation of public policy.**

40. An employee who had put in almost 35 years of service, deserved a more sympathetic approach from his company, while being inflicted with major punishment of dismissal from service, during a very difficult period the world was passing through.
41. Thus in view of the guidelines laid down in ***Central Industrial Security Force and Ors. (Supra)*** and ***Union of India & Ors. vs P. Gunasekaran (2015) 2 SCC 610, Para 12:-***
  - i. The enquiry in this case has not been held according to the procedure laid down under the law.
  - ii. There has been clear violation of the principles of natural justice in conducting the proceedings.
  - iii. The authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case.
  - iv. The authorities have allowed themselves to be influenced by irrelevant or extraneous considerations.
  - v. The conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion.

- vi. The disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding.
  - vii. The finding of fact as stated is based on no evidence and thus suffers from perversity.
42. **A chargesheet cum dismissal notice** is a document which puts questions regarding the allegations (charge) and if clubbed with a dismissal (order) then it can be **presumed that the decision to terminate was already taken prior to the charge sheet.** A case where questions (charge) directly end in dismissal (result) with no scope to answer (chargesheet cum dismissal letter), is clearly an abuse of the process of law.
43. The workman in this case was dismissed on 04.06.2000, that is during the **1<sup>st</sup> Covid pandemic period, when there was mass panic** around the world for this unforeseen fatal disease and being dismissed during this period and in the manner done is basically 'cruelty' beyond imagination.
44. A workman, who had put in 35 years of service, with no past grievances or allegations against him, was treated in the most **inhuman manner. As such the compensation granted by the tribunal is also justified, the whole process being under a beneficial legislation.**
45. Thus, the order passed by the tribunal on 17.01.2025 in Case No. 15 of 2020, being in accordance with law is modified to the extent that the direction to pay cost of Rs. 5,00,000 (five lacs) is hereby set

aside. Rest of the order under challenge requires no interference and be complied with by the petitioner within 30 days from the date of this order.

- 46.** The respondent/workman's prayer to withdraw the amount deposited by the petitioner with the learned Registrar General, High Court, Calcutta, may be entertained after the period of appeal.
- 47. WPA 7792 of 2025 is disposed of.**
- 48.** Pending applications, if any, stands disposed of.
- 49.** Interim order, if any, stands vacated.
- 50.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

**(Shampa Dutt (Paul), J.)**