

(1988) 06 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 5552 of 1984

Ahmedabad New Textile Mills

APPELLANT

Vs

Textile Labour Association and Another

RESPONDENT

Date of Decision : 17-06-1988

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78A(1), 79, 84(1)
Constitution of India, 1950 — Article 227

Citation : (1988) 2 GLR 1324 : (1994) 3 LLJ 169

Hon'ble Judges : R.J. Shah, J;A.M. Ahmadi, J

Bench : Division Bench

Advocate : M.B. Buch, for K.S. Nanavati, for the Appellant; Noormahmad Pirbhai, for the Respondent

Judgement

Ahmadi, J.—The workman, Noorahmad Pirbhai (Second respondent), was serving in the "Sarni" Department of the Ahmedabad New Textile Mills (Now a unit of National Textile Corporation), at all material times. He was also a representative of the Textile Labour Association (First respondent) in the "Sarni" Department of the Mill in 1981. Two show-cause notices, first dated 16th September, 1981 and the second dated 21st September, 1981 containing allegations of misconduct by the said workman were served upon him by the management. Immediately thereafter he was placed under suspension with effect from 22nd September, 1981. In the first show-cause notice Exhibit 10 dated 16th September, 1981 it was alleged that he proceeded on sick leave from 10th August, 1981 to 20th August, 1981 and on 21st August, 1981 forwarded certificates of sickness and fitness from E.S.I. Corporation but did not report for work and remained absent without leave with effect from 21st August, 1981 and later produced a certificate of Dr. C.S. Ciao dated 14th September, 1981 to the effect that he was unfit for work with effect from 29th August, 1981 to 14th September, 1981. It was, therefore, alleged that even though he was found fit to work as per the E.S.I. Certificate between 21st August, 1981 and 28th August, 1981, he did not report for work and remained absent without leave and without any intimation

whatsoever to the Department. It was further alleged that during the said period he was seen outside the gate of the Mill Company which went to show that he did not require rest as mentioned in Dr. Ciao's certificate. He was, therefore, called upon to show-cause why he remained absent without leave with effect from 21st August, 1981 and why he remained absent even after 14th September, 1981. So far as the second show-cause notice, Exhibit 11, dated 21st September, 1981, is concerned, the charges levelled against him were: (i) he behaved rudely with his superiors; (ii) remained absent without leave from time to time and once for a continuous period of sixteen days; (iii) his production was less than average and he was responsible for inciting other employees to slow down the production; (iv) tried to help his relative with a view to suppressing his involvement in a theft case; and (v) he was found indulging in collection of funds for the Union and doing business within the precincts of the Mill-Company. On these charges a departmental inquiry was initiated against him and the Inquiry Officer submitted a report holding him guilty on all counts. The petitioner-Company, therefore, dismissed him from service. Against this dismissal, the Textile Labour Association preferred an application u/s 79 of the Bombay Industrial Relations Act, 1946 (hereinafter called "the Act") challenging the legality and propriety of the order passed by the employer against the workman.

2. The application was heard by the Presiding Officer of the Labour Court, Ahmedabad. Evidence was led to show that the inquiry was not legal and proper but subsequently a purshis, Exhibit 13, dated 24th Dec., 1982 was tendered stating that the workman did not dispute the procedural legality of the inquiry conducted against him but according to him the findings recorded by the Inquiry Officer were perverse and the punishment meted out to him was unwarranted. The Labour Court, therefore, concluded that the departmental inquiry in so far as procedural aspect is concerned must be taken to be proper and then proceeded to consider the other two submissions, namely, whether the findings recorded by the Inquiry Officer were perverse and whether the punishment of dismissal from service was warranted. The Labour Court then proceeded to examine the evidence pertaining to each charge and came to the conclusion that there was sufficient evidence in support of the finding that the workman had remained absent without leave from 21st August, 1981 to 28th August, 1981. In other words, the allegation in the show-cause notice, Exhibit 10 in so far as it related to absence without leave during the aforesaid period was held established. So far as the five charges levelled in the second show-cause notice, Exhibit 11, dated 21st September, 1981, are concerned, the Labour Court came to the conclusion that the first two charges were not proved. It also concluded that the allegation that the production or output of the workman was less than average was established. It also came to the conclusion that one Abdul Rahim Ganib-hai, a relative of the workman, was apprehended for alleged theft and the workman had attempted to help him by approaching the employees of the Mill to hush up the matter out when this was not possible, he tried to incite the workers of the department against Abdul Rahim's replacement, Ismail Kalubhai. The Labour

Court, therefore, came to the conclusion that the second part of charge (iii) and charge (iv) were established. So far as charge No. (v) is concerned, the Labour Court came to the conclusion that the evidence disclosed that he was collecting funds for the Union as its representative from the employees of the Mill but on facts it found that at no time prior to the show-cause notice, Exhibit 11, dated 21st September, 1981 the Mill-Company, had ever objected to the same. It also found that the allegation that the workman was selling cloth pieces within the precincts of the Mill was established but the Labour Court thought that this was never objected to in the past and the charge was deliberately put up as the management decided to terminate his service. Taking the totality of the charges found established into consideration, the Labour Court observed. The nature of the charges against the applicant do not merit the dismissal from service of the applicant, but this is a fit case to deprive him of 75 per cent wages, because the act of inciting other workers to give less production in Sarni Department only because Ismail Kalu was made a jobber is an act which cannot be excused without proper punishment irrespective of the fact whether the incitement resulted in dwindling of the production in the "Sarni" Department or not". As a fact, however, the Labour Court found from the production record of "Sarni" Department that the incitement had not resulted in fall in production. In this view that the Labour Court took, the Labour Court directed that the workman be reinstated in service either on his original post or in other alternative equivalent post, so that his basic pay and emoluments do not suffer, with continuity in service. The management was directed to pay 25 per cent back wages with effect from 13th October, 1981 upto the date of actual reinstatement in service. No order was made as to costs.

3. Feeling aggrieved by the order passed by the Labour Court, both the contesting parties preferred appeals u/s 84 of the Act. Both these appeals were heard by the Industrial Court (by mistake the designation is shown as Industrial Tribunal). The Industrial Court came to the conclusion that except for the charges: (i) rude behaviour with superiors and (ii) habituated to remain absent without leave, the rest of the charges were proved. The Industrial Court thereafter went into the question of the legality of the order passed by the Labour Court. It came to the conclusion that inciting and instigating colleagues to reduce production with a view to giving the new Jobber, Ismail Kalubhai, a bad name was a serious matter and, therefore, it would not be proper to impose the workman on the Company by directing his reinstatement in service. The Court, however, felt that if the dismissal is sustained, the entire family of the workman would be ruined and hence relying on the decision of the Supreme Court in the case of Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others, it directed the payment of Rs. 35,000/- by way of compensation in lieu of reinstatement. It was also clarified that in addition to the compensation he will be entitled to his provident fund dues. In this view that the Industrial Court took, it dismissed the appeal of the workman and partly allowed the appeal of the petitioner-Company. It set aside the order of the Labour Court

directing reinstatement in service with 25 per cent back wages and instead directed the payment of Rs. 35,000/- by way of compensation in lieu, of reinstatement. Parties were directed to bear their own costs.

4. Feeling dissatisfied with the above order of the Industrial Court, the Company has preferred this petition under Article 227 of the Constitution. Mr. Buch, the learned Advocate for the petitioner-Company, submitted that since the legality of the domestic inquiry was not in challenge, the Courts below had merely to consider if the impugned order passed by the employer was in conformity with the relevant Standing Orders. He submitted that once it was found that the order was consistent with the Standing Orders, the Labour Court ought not to have interfered with the order, as the jurisdiction conferred on that Court under Sub-clause (ii) of Clause (a) of paragraph A of Sub-section (1) of Section 78 is limited and does not empower the Labour Court to interfere with the order of punishment. He emphasised that the jurisdiction of the Industrial Court exercising appellate powers u/s 84, of the Act is equally limited and once it (Industrial Court) came to the conclusion that certain acts of misconduct under the relevant Standing Orders were established, it was not open to it to interfere with the order of dismissal and to award compensation in lieu of reinstatement. Lastly he submitted that the compensation awarded by the Industrial Court was excessive having regard to the conduct of the workman prior to his dismissal from service. He, therefore, submitted that even if this Court holds that the Courts below had jurisdiction to interfere with the quantum of punishment, the amount of compensation awarded by the Industrial Court being excessive should be substantially reduced.

5. In order to appreciate the contentions urged by Mr. Buch, it is necessary to notice a few relevant provisions. The Act was enacted inter alia to regulate the relations of employers and employees in certain matters, Section 35 enjoins upon the employer to submit draft standing orders in regard to the industrial matters mentioned in Schedule I for approval by the Commissioner of Labour within the prescribed period. After the standing orders are approved and recorded by the Registrar in his book, they become operative. The standing orders or in their absence the model standing orders, shall u/s 40 be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I. Sub-section (2) of Section 40, however, provides that notwithstanding anything contained in Sub-section (1) the State Government may refer or an employee or a representative Union may apply in respect of any dispute of the nature referred to in Clause (a) of paragraph A of Section 78 to a Labour Court. Therefore, notwithstanding the fact that the Standing Orders are made determinative of the relations between the employer and his employees in regard to the industrial matters specified in Schedule I, an application in respect of any dispute of the nature referred to in Clause (a) of paragraph A of Section 78 can lie to the Labour Court. If we turn to Schedule I, we find termination of employment and punishment of dismissal for misconduct mentioned therein as industrial matters amongst others in respect

whereof Standing Orders were required to be made. We now come to Section 78 and it would be sufficient to reproduce the relevant part thereof which reads as under:

"78 (1) A Labour Court shall have power to-

A. decide

(a) dispute regarding-

(1) The propriety or legality of an order passed by an employer acting or purporting to act under the standing orders."

It follows, therefore, that even though the Standing Orders are determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I, the Labour Court has the power to examine the propriety and legality of the employer's order under the Standing Orders. Therefore, as held by this Court in *Sarangpur Mills v. I.G. Thakore* 1965 GLR 259, the determinative character of the Standing Orders will not preclude the Labour Court from entertaining and deciding an application made u/s 79 of the Act challenging the propriety or legality of the employer's orders, though made or purported to have been made under the Standing Orders.

6. The question then is, what is the ambit of the Labour Court's jurisdiction under Sub-clause (i) of Clause (a) of paragraph A of Section 78(1) of the Act ? Under the said provision the Labour Court is empowered to decide a dispute regarding the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders. Both the tests of legality and propriety have to be satisfied to defeat any action initiated u/s 79 read with the relevant clause of Section 78(1). Even if an order is legal, that by itself is not enough. It must also be shown to be proper. If an order is not in conformity with the provisions of the Act or the Rules or Standing Orders or is violative of the principles of natural justice and fair play or the like, it can be interfered with by the Labour Court as being illegal. But even if the order is legal, it can still be questioned on the ground that the same lacks in propriety. In a case where the legality of the order is not questioned, as in the present case, the employer must still show that his order is proper. The expression "propriety" is capable of a variety of meanings. Its shades and nuances would have to be gathered from the context in which that word appears and the facts and circumstances of each case. In the *Oxford English Dictionary*, Vol. VIII, the word "propriety" is stated to mean: that which is proper (in various senses of the adjective), fitness, appropriateness, aptitude, suitability; appropriateness to the circumstances or conditions; conformity with requirement, rule or principle; rightness, correctness, justness, accuracy, etc. Therefore, when the Labour Court is called upon to decide a dispute regarding the propriety of an order passed by an employer, it is open to the Labour Court to decide whether the said order, is proper, fit, appropriate, suitable and in conformity with rightness, correctness, justness and accuracy. In doing so, the Labour Court can also examine whether the

punishment imposed by the employer under the impugned order is just and proper in the facts and circumstances of the case because punishment forms part of the employer's order, the propriety whereof is open to scrutiny by the Labour Court. The employer's order may comprise of the allegations, averments, facts, evidence, both documentary and oral, and reasons in support of the ultimate findings reached by the employer as well as reasons for the punishment proposed to be imposed against the delinquent. It is, therefore, obvious that when the Labour Court is invested with the power to examine the propriety of the order passed by the employer, the Labour Court can also consider whether in the fact and circumstances of the case the employer was justified in visiting the employee with the extreme punishment of dismissal. The order imposing the punishment is a part of the employer's order, the propriety whereof is under the scrutiny of the Labour Court and hence the Labour Court would be justified in considering the appropriateness and justness of the said order. In Sarangpur Mill case (supra), this Court held that the expression "legality and propriety" used in paragraph A of Section 78(1) of the Act does not limit the jurisdiction of the Labour Court to a revisional jurisdiction. This Court held that the proceedings before the Labour Court were in the nature of original proceedings and hence the jurisdiction of the Labour Court is wider than the jurisdiction that a revisional authority exercises while deciding the question of legality and propriety of an order passed by a subordinate authority. We, are therefore, of the opinion that the contention of Mr. Buch that the Labour Court cannot revise the punishment if it comes to the conclusion that some of the charges levelled against the delinquent were established does not appear to be in consonance with the language of the statute.

7. In *Vithoba Maruti v. S. Taki Bilgrami* (1963) 66 BLR 426, a Division Bench consisting of Mudholkar and Patel, JJ. held that under Sub-clause (i) of Clause (a) of paragraph A of Section 78(1), the Labour Court can examine the propriety of an order made by an employer acting under the Standing Orders and in appropriate cases set aside the order or alter the same to avoid miscarriage of justice. The Court also held that the section gives ample power to the Labour Court to interfere with a finding or with punishment imposed if such an interference is called for on the ground of its impropriety in the order to avoid grave injustice occurring to the delinquent. It will, therefore, appear from the above decision that the Labour Court is not prevented from exercising jurisdiction if it is satisfied that the order regarding punishment is not just and proper having regard to the facts and circumstances of the case.

8. In *Manekchowk and Ahmedabad Manufacturing Company, Ltd. Vs. Industrial Court (I.G. Thakore, President) and Another*, , one of the questions which this Court was required to consider related to the jurisdiction of the Labour Court u/s 78(1) of the Act. After considering the case-law on the subject, this Court in paragraph 30 of the judgment observed as under:

"From the aforesaid cases, it does appear that it would not be open for the

Labour Court or the Industrial Tribunal as the case may be, to reappraise the evidence on record or sit in appeal over the findings recorded by the domestic Tribunal, and howsoever severe or unjustified the punishment may appear to him and howsoever he may be inclined not to give such punishment if he would have to deal with it, it would not be proper to interfere with the order of punishment passed by the domestic Tribunal unless, if we were to say so, it was shockingly disproportionate to the acts said to have been committed by him"

It would appear from observations that originally a Labour Court or an Industrial Court exercising jurisdiction u/s 78(1) ought not to interfere with the order of punishment as if it were an appellate Court but may do so in a given case if the order of punishment passed is so disproportionate to the established misconduct as to shock judicial conscience. To put it tersely, it means that ordinarily the Labour Court or the Industrial Court should not interfere with the order of punishment except in rare cases where the punishment is shockingly disproportionate to the misconduct committed by the workman. The power to interfere with the order of punishment exists but all that the decision conveys is that it would be exercised sparingly.

9. In *Babulal Nagar and Others Vs. Shree Synthetics Ltd. and Others*, the Supreme Court was required to consider the provisions of Secs. 61 and 66 of the Madhya Pradesh Industrial Relations Act (Act 27 of 1960) which empowered the Labour Court to decide the legality and propriety of any order passed by an employer under the Standing Orders. Section 61 inter alia conferred power on the Labour Court:

"A. to decide-

(a) disputes with regard to which an application has been made under Sub-section (3) of Section 31 to it".

Section 31 entitled an employee to make an application for relief against an order of an employer made under the Standing Orders. Dismissal from service was one of the matters provided for in the Standing Orders. Relief against such an order could be obtained by preferring an application u/s 61. The Labour Court was empowered to examine the propriety or legality of an order passed or an action taken by an employer acting or purporting to act under the Standing Orders". The decision of the Labour Court was subject to revision by the Industrial Court u/s 66(1) of the Act. However, the jurisdiction of the Industrial Court was limited by the proviso. It will thus be seen that the provisions of the Madhya Pradesh Industrial Relations Act were analogous to the provisions contained in Sections 78(1) and 79 of our Act with the difference that under our Act the decision of the Labour Court was appealable whereas under the Madhya Pradesh law a revision lay to the Industrial Court. While dealing with the question of ambit of jurisdiction of the Labour Court, the Supreme Court after referring to the dictionary meaning of the word "propriety" observed in paragraph 14 as under:

"When jurisdiction is conferred upon the Labour Court, not only to examine the legality of the order as also the propriety of the order, the Labour Court can in exercise of the jurisdiction examine the propriety or impropriety of the order".

The Supreme Court then proceeded to add as under:

"If, therefore, the justice or the justness in relation to a legal proceeding where evidence is led is questioned and the authority is conferred with jurisdiction to examine the propriety of the order or decision that authority will have the same jurisdiction as the original authority to come to a different conclusion on the same set of facts. If any other view is taken the expression "propriety" would lose all significance".

10. What emerges from the above discussion is that the Labour Court is invested with wide jurisdiction to examine the propriety and legality of the employer's order under the Standing Orders. The order passed by the employer must be shown to be not only in conformity with law but also in conformity with justness and reasonableness. If the order passed by the employer is so disproportionately harsh as to shock judicial conscience, the Labour Court or the Industrial Court, as the case may be, would be entitled to interfere with the said order. It is, therefore, not possible to accept the extreme submission of Mr. Buch that the Labour Court or the Industrial Court has no power to interfere with the punishment imposed by the employer on proof of misconduct under the Standing Orders. If such a view is accepted, it would tantamount to investing the employer with the power to visit the extreme penalty of dismissal from service even for a minor misconduct. We are, therefore, of the opinion that having regard to the language of the statute, the context in which the expression appears and the underlying object of the benevolent legislation it is not possible to accede to the submission of Mr. Buch that once any misconduct mentioned in the Standing Orders is proved or held established, the Labour Court or the Industrial Court cannot interfere with the order of punishment, no matter whether it is in the facts and circumstances of the case justified or not.

11. Coming now to the facts of the present case we have pointed out above that the charges levelled against the workman under the two show-cause notices were : (i) absence without leave from 10th August, 1981 to 20th August, 1981; (ii) rude behaviour with the superiors, (iii) habitually absenting himself without leave and in one case without leave for sixteen days; (iv) his production falling below average and he having incited his colleagues to reduce production; and (v) his attempt to save his relative who was apprehended for theft and collection of funds for the Union and carrying on of business activity within the precincts of the Mill. As stated above, the Labour Court came to the conclusion that some of the charges including the charge of inciting co-workers to reduce production and trying to shield his relative who was apprehended for theft were proved. The Labour Court came to a definite conclusion that the instigation and incitement of co-workers to reduce production had in fact not affected the production of the Company. The Labour Court also felt that even though the workman's relative

Abdul Rahim Ganibhai was apprehended for theft, the management had not proved that he had actually committed theft and, therefore, it is difficult to judge whether the workman was wrong in intervening or attempting to protect his relative. In this behalf the Labour Court also kept in mind the fact that the workman was a Union representative and, therefore, it was his job to stand-by a co-worker in difficulty. Taking all these facts and circumstances into consideration the Labour Court was of the opinion that the nature of the misconduct did not merit the dismissal of the workman from service and it would suffice if he is deprived of 75 per cent of his wages. Against this order of the Labour Court both the Company as well as the workman appealed to the Industrial Court. As stated earlier the workman's appeal was dismissed. His application under Article 227 of the Constitution was also rejected and the Supreme Court refused to give special leave to appeal against that order. Therefore, so far as the workman is concerned, he can be said to have exhausted his remedies. In the appeal filed by the management, the Industrial Court came to the conclusion that except the first two charges, the rest of the charges were proved. The Industrial Court then opined that having regard to the fact that the workman had put in seventeen years of service and was aged 35 years at the date of his dismissal, ordinarily it would not be proper to deprive him of his job as that would ruin his entire family but having regard to the fact that the Mill-Company had lost trust because of his misdemeanours it would be proper to compensate him rather than reinstate him in service. In taking this view the Industrial Court placed reliance on the decision of the Supreme Court in Anilkumar Chakravarti's case (supra). In that case, however, the Appellant Anilkumar held a position in trust (it is doubtful if the same can be said in regard to the respondent before us) and, therefore, the Court held that it was not a case for reinstatement and the proper course was to award compensation in lieu of reinstatement. Taking note of the fact that the workman had put in seventeen years of service and was aged about 35 years when he came to be dismissed and that the full back wages for the period of absence after dismissal till the Labour Court ordered reinstatement would come to about Rs. 26,000/-, the Industrial Court thought that Rs. 35,000/- should be adequate compensation for refusing reinstatement in service. The question is whether this approach of the Industrial Court is justified.

12. We have already pointed out earlier that the jurisdiction u/s 78 is limited to examining the legality and propriety of the employer's order, that is to say, that the Labour Court will not substitute its findings in place of the findings recorded by the inquiry officer as if it is a Court of Appeal. In such cases the Labour Court can examine whether the domestic inquiry was a fair one i.e., consistent with the principles of natural justice and whether the findings recorded were based on evidence on record and were not the outcome of prejudice. It would be justified in interfering with the findings if it is of the view that no reasonable person would reach such a conclusion on the evidence on record. If, however, two views are reasonably possible the Labour Court will have no jurisdiction to substitute its view for the employer's view. In the present case it is manifest from Paragraph

21 of the Labour Court's judgment that it had examined the findings from this limited angle only. This was also the approach of the Industrial Court as can be seen from Paragraph 9 of its judgment. It is, therefore, obvious that both the Courts had applied the correct principle. This is, however, the first part of the scrutiny so far as the investigation into the legality and propriety of the employer's order is concerned.

13. Then comes the second aspect and that is whether the punishment meted out to the delinquent is proportionate to the established guilt. We have already pointed out earlier that the jurisdiction to examine the legality and/or propriety of the employer's order extends to the punishment aspect also. The range of punishments from censure to dismissal are provided so that the employer can pick the punishment which is commensurate to the proved misconduct.

The question of punishment cannot be left to the whim of an employer. If an employer visits the delinquent with punishment which is utterly disproportionate to the proved misconduct, the Labour Court would be entitled to interfere on the ground that the order is lacking in propriety. The Labour Court which is invested with jurisdiction to oversee both the legality and propriety of the employer's order cannot be a mute spectator to the employer's excess. But the jurisdiction in this behalf is also limited to only those rare cases where the punishment meted out is so disproportionate to the established guilt that it would shock judicial conscience. Such a punishment would smack of impropriety and would betray malice or prejudice and the Labour Court would be duty bound to interfere. We have dealt with this aspect in detail earlier and need not dilate on it any more.

14. The question then is, whether the Courts below were justified in interfering with the findings of fact recorded at the domestic inquiry? In this connection we must bear in mind the fact that they can interfere only if they find any finding of fact to be perverse. They have disagreed with the findings on certain issues of fact as they concluded that those findings were against the weight of evidence. The conclusion of the Courts below in this behalf have not been assailed but what is contended is that once some of the charges were found proved, it was not open to the Courts below to interfere with the employer's decision on the quantum of punishment. We have already held that the Labour Court/Industrial Court can examine the propriety of the decision as to punishment also as it constitutes an integral part of the employer's order. Both the Courts came to the conclusion that the punishment of dismissal was disproportionate to the proved misconduct and the workman should be reinstated in service. The Industrial Court, however, felt that having regard to the misconduct of the workman it would be proper to order payment of compensation in lieu of reinstatement. It quantified the compensation as Rs. 35,000/-.

15. It will thus be seen that both the Courts below have opined that the punishment of dismissal was wholly disproportionate to the established guilt. The Industrial Court has taken the view that all the charges except that of rude

behaviour with superiors and habitual absence without leave were proved although it did hold that the delinquent was absent without leave with effect from 21st August, 1981. It took the view that giving less production and instigating others to cut down their output is a serious matter but felt that since the incitement did not have any impact on the actual production, the workman did not deserve harsh treatment. As regards helping a relative apprehended for theft, the Industrial Court did not think that the matter was so serious as to put an end to his service. Taking an overall view it thought that the punishment of dismissal was not warranted and substituted it by grant of Rs. 35,000/- as compensation. Thus the consistent view of both the Courts below is that the extreme punishment of dismissal is unwarranted.

16. It is obvious from the above discussion that the Courts below have not acted without jurisdiction nor have they passed orders in utter disregard of the evidence on record. They have taken into consideration the totality of the charges proved against the workman before opining on the question whether the punishment imposed by the employer was shockingly harsh. Taking into consideration the fact that except for his interference in the case of his relative charged with theft and the consequential exhortation of the workers to slow down production (an attempt which proved futile) there was nothing so serious as to invite the extreme penalty of dismissal, the Industrial Court thought that it would be proper to direct payment of compensation in lieu of reinstatement. Whether a punishment is shockingly disproportionate or not would depend on the facts and circumstances of each case and ordinarily this Court would not interfere with the discretion exercised by the Labour Court or Industrial Court unless it smacks of abuse of power resulting in grave injustice. The power of superintendence conferred on this Court is of an extraordinary nature to ensure that Courts and Tribunals function within the bounds of their authority and cannot be invoked to correct errors of fact and even law unless it has resulted in gross miscarriage of justice. True it is, that the language of Article 227 of our Constitution does not use words of limitation while conferring powers on the High Courts but that does not mean that it would be justified in interfering with the order of the lower Court or Tribunal if it feels that it would have exercised the discretion differently. The power that is conferred is of superintendence and not that of an appellate Court and hence it must be used in exceptional cases to avoid miscarriage of justice. We do not think that the exercise of discretion by the Industrial Court has resulted in grave injustice to the petitioner Company.

17. It was next argued that the compensation awarded was excessive. The Industrial Court has pointed out that the loss by way of back wages works out to Rs. 26,000/-. He was awarded 25 per cent by the Labour Court while reinstating him in service. In other words, he was deprived of 75 per cent back wages and granted reinstatement. By refusing him reinstatement he is deprived of his gratuity of 17 years' service and further benefits of gratuity, employer's contribution to provident fund, periodical increments in wages, dearness allowance, etc. We, therefore, do not think that the award of Rs. 35,000/- is on

the higher side. In Anilkumar Chakravarti's case also, the appellant who was, a compounder drawing a monthly salary of Rs. 174-60 ps. was dismissed from service on 15th September, 1965. The total amount of wages, etc., due to him calculated upto 31st March, 1973 came to Rs. 36,486/-. Keeping in mind the then grade of compounder in the Company, the appellant was awarded a lump sum payment of Rs. 50,000/- as just and fair compensation in lieu of reinstatement. We are, therefore, of the opinion that the amount awarded as compensation in lieu of reinstatement to the respondent workman by the Industrial Court cannot be said to be such as would warrant interference by this Court under Article 227 of the Constitution.

18. In view of the above, we do not see any merit in this petition. We, therefore, discharge the rule with no order as to costs. Interim relief vacated.