
(1990) 08 MAD CK 0056
In the Madras High Court
Case No : Writ Petition No. 8687 of 1985

Air Lanka Ltd.

APPELLANT

Vs

John William Nathan and another

RESPONDENT

Date of Decision : 29-08-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1991) 62 FLR 953 : (1991) 1 LLJ 291 : (1991) 2 MLJ 304

Hon'ble Judges : S. Govindaswamy, J

Bench : Single Bench

Judgement

S. Govindaswamy, J.—The petitioner has filed the above writ petition to issue a writ of certiorari to quash the Award dated 25th June 1985

passed by the second respondent in I.D. No. 41 of 1984 on his file.

2. The petitioner is a company registered as Air Lanka Ltd., and is an International Carrier of the Government of Sri Lanka. It operates in India as

a result of agreement between the Government of Sri Lanka and the Government of India through International airports of Madras, Bombay,

Trivandrum and Tiruchy in India. It has an office in the City of Madras. The first respondent was employed as an Office Helper in the Madras

Office with effect from 15th October 1979. On 16th October 1981, the first respondent was found removing an Air Travel Bag from the

Manager's Office without any permission. When this was noticed, the first respondent attempted to hide the Air Travel Bag and when questioned

about the same, the first respondent attempted guilt and submitted that he would not commit such offence again and hence he wanted to be

excused. It appeared that prior occasions there were several instance of lapses and misbehaviour in the discharge of duties on the part of the first

respondent. He was censured by way of warning for his past mis-conduct. The Madras Office sent a telex message on 16th October 1981 to the Colombo Headquarters Office requesting permission to terminate the services of the first respondent as he was found removing Air Travel Bag from the office and also intimated the previous misbehaviour and warnings and also recommended that the first respondent was not to be trusted and should not be kept any longer. Then again by telex message dated 17th October 1981 the Madras Office informed the Headquarters Office at Colombo that due to compassionate grounds there could be a punishment to the effect that one year increment would be withheld and warning could be issued that if there is any occurrence of this nature in future his services would be terminated forthwith. Colombo Headquarters Officer, by telex message dated 20th October 1981 addressed to the Madras Office stated that when the offence committed is so grave, it warrants dismissal and disciplinary action should be taken and also intimated to withhold further action and wait for Head Office instructions. The Headquarters Officer, Colombo sent a telex dated 27th October 1981 addressed to the Madras Office stating that the first respondent should be given an opportunity on or before a specified date and in case the staff refused to submit the same he should be dismissed immediately. Thereafter, the Manager of the local office by Notice NAA 6-A/467/10/81 dated 31st October 1981 addressed to the first respondent herein stated that he was found removing Air Travel Bag from the stock held in the office for his own use without the permission of the Manager and when that was noticed the first respondent tried to hide the same and when it was questioned the first respondent admitted his guilt and as this act of the first respondent amounts to theft of company's property, called upon the first respondent to explain as to why his services should not be terminated with immediate effect and also informed that his reply should reach the office within 24 hours from the date of the said letter. The first respondent by his letter dated 1st November 1981 submitted his explanation, wherein he has stated that he knew that he behaved very stupidly and that he should have taken the permission of the Manager before trying to take the bag from the office and further stated that he did not take back the bag but left the bag. He has further stated that he would not taken anything from the Air Lanka Office in future and that was the first time that he has

committed such an offence and that he had never committed this act before and also made an assurance that he would never do in future and hence

requested to take sympathetic view in this behalf.

3. On consideration of the materials on record, Manager of the local office by his communication NAA-6-A/269/11/81 dated 18th November

1981 informed the first respondent that he had been instructed by the Personnel Manager, Air Lanka, Colombo, to terminate your services with

immediate effect. Thereafter, the first respondent raised an industrial dispute and on reference the second respondent has taken it on file and

numbered as I.D. No. 41 of 1984.

4. Before the Labour Court, the counsel for the first respondent made an endorsement to the effect that he was confining his arguments only to the

quantum of punishment and sought for an adjudication on that question under Sec 11-A of the Industrial Disputes Act, hereinafter referred to as

the Act. Accordingly, the matter was heard on the aforesaid question. No oral evidence was adduced on his behalf. Exts. W-1 to W-7 and M-1

to M-18 were marked by consent of both sides. On behalf of the petitioner, the Airlines Manager was examined as M.W. 1. The Labour Court by

its Award dated 25th June 1985 set aside the order of termination and directed reinstatement of the first respondent herein with backwages,

continuity of service and there attendant benefits and imposed a punishment of stoppage of his annual increment for three years with effect from the

date of his reinstatement, but without affecting his continuity of service.

5. The Labour Court while passing the Award has taken the view that the order does not disclose that the past record of service of the petitioner

had been taken into account while awarding punishment of dismissal, that the past events of misconduct and the punishment of warning etc.,

imposed on the first respondent did not indicate any serious misconduct committed by the first respondent and that the first respondent had been

guilty of having committed theft of a complimentary air bag valued at Rs. 100/- for which he had given an unqualified apology and begged to be

excused and as such the punishment of dismissal for such trivial act of misconduct was grossly disproportionate to the gravity of the misconduct

committed by him, that the petitioner was only a Helper, that he was not holding any responsible post of confidence to entail any security risk and

in the said circumstances the plea that the Management has lost confidence in the petitioner and that he should not be reinstated in service had to be rejected and consequently set aside the order of dismissal and directed reinstatement with backwages, continuity of service and other attendant benefits and imposed punishment of stoppage of his annual increment for three years with effect from the date of his reinstatement, but without affecting his continuity of service. It is this Award that is sought to be challenged in this writ petition.

6. The petitioner has stated that the first respondent was a habitual late-comer and was warned several times for it and that when the first

respondent was asked to deposit the money in the Bank he did not return within the normal period and on 25th May 1980 when one of the

Officers went to the Bank at about 11.15 A.M. to check whether the first respondent who had already left with the cash was held up at the Bank,

but to his surprise it was found that the first respondent was not seen and when an explanation was called for, the first respondent tendered an

apology. The petitioner has further stated that the first respondent was found to have taken the attendance register unauthorisedly and when an

explanation was called for, the first respondent tendered an apology and on 16th October 1981 the first respondent was found removing an Air

Travel Bag from the Manager's Office without the permission and thereby committed an offence of theft, which resulted in termination of his

service. It is also stated that the act of theft has to be viewed with considerable seriousness, especially when the petitioner is a National Carrier of

Air Lanka, Furthermore, the employee in his capacity as Office Helper had free access to the commercial office of the petitioner and also to the

International Air Port Terminal at Madras whenever he had to collect mail or carry out duties at Airports and in view of the disturbance in Sri

Lanka, the Commercial Office in the City of Madras could very well be the target of attack. It is also stated that from the point of view of the

safety of the passengers' baggage's and tickets, it is not advisable to have a person like the first respondent in service. It is stated that the

passengers were in the habit of leaving their baggage in the City Office and touring the city or attending to other work and return later to collect the

baggage and there is a vast scope for persons like the first respondent in indulging in acts detrimental to passengers themselves and airlines as well.

It is in these circumstances that the dismissal of the first respondent was justified even if it is a theft of an air-bag.

7. The petitioner has also stated that the nature of business of the employer would be one of the factors that should be taken note of while deciding

the question whether punishment was disproportionate or not. It is also stated that it would be impossible for the management to retain a person in

whom it has no confidence particularly when it is known that the employee had committed theft and that the management would be justified in

expecting total integrity from its employees particularly given the state of terrorism as prevailing in which the first target of attack invariably is a

foreign airline office or its aircraft, that there is ethnic unrest having grievances against the Sri Lanka Government and that the airline office could

become a target of attack, that the petitioner was dealing with an employee, viz., the first respondent, who not only committed theft but had also

pilfered confidential telex message and that this by itself would show that the employee was not one who was likely to reform. It is also stated that

the Airline Office was far different from any of the commercial organisations and if at all that the employee ought to have been given some benefit

be could have kept in mind a benefit of compensation. The petitioner has also raised issues, which are as follows :-

a) Whether the Labour Court while exercising discretion under Sec. 11-A of the Industrial Disputes Act could direct reinstatement of an employee

who has been found guilty of theft even by the Labour Court without considering the nature of work performed by the petitioner, an International

Airline and International Carrier of the Govt. of Sri Lanka; particularly in the light of present state of affairs regarding security, safety of passengers

and such like when absolute integrity of all employee to the satisfaction of the employer is a must.

b) Whether in the face of threats of international terrorism particularly directed against air-craft and offices of International Air-lines of countries

against which some group of ethnic grievances exist and it would be safe from the point of view of security and passengers safety to direct

reinstatement of an employee whose integrity is in question arising out of his committing theft from the Airline office itself, more so when he holds a

position which allows free entry and exist from the Airline office and Airport, particularly in the case of the petitioner who has been already the

target of a bomb blast in the Madras Airport relating to which one of its employees is an accused, reinstatement could be directed or whether it would be a fit case for grant of compensation.

8. The first respondent in his counter has stated that the second respondent has rightly exercised the discretion under Sec. 11-A of the Act and

awarded a lesser punishment restricting the punishment to stoppage of increment for three years, that since the introduction of Sec. 11-A under the

Industrial Disputes Act, award of punishment is not an exclusive managerial function but is subject to review and interference under Sec. 11-A of

the Act and that at the instance of the petitioner, the first respondent has given a letter on 1st November 1981, wherein the first respondent has

stated as follows :-

Sir, I know that I have behaved very stupidly and I should have taken your permission before trying to take a bag from the office.

Sir, I did not take the bag but I left it back as you are aware. Sir, I will never do such a thing in future. I will not take any thing from the Air Lanka

Office in future. Sir, this is the first time that I have done such an offence. I have never committed this act before and I assure you, Sir, that I will

never do this in future.

It is stated that on the basis of this letter, the petitioner has awarded the extreme punishment of termination of service. It is also stated that an

International Airline is not a special category exempted from the provisions of the Act and without such an exemption it is wrong on the part of the

Management to plead that they should be treated differently and that the Labour Court should not exercise the discretion conferred upon it under

Sec. 11-A of the Act and award reinstatement. It is stated that the allegations of international terrorism and extraordinary requirements of

International Airlines are exaggerated to deny reinstatement to the first respondent. It is stated that the first respondent was given merit increment

on 10th August 1981 and from this it would be clear that there was no grievance at all against the first respondent and that his past conduct was

without any blemish. The first respondent has stated that he had taken the bag to give it to the Priest and in case if he had done anything wrong they

should accept his apology and had denied the allegation that he had committed theft of company's property. It is also stated that it is clear from the

telex message dated 17th October 1981 that the Manager of the local office was of the opinion that the first respondent's act should be viewed

leniently and punishment of one increment cut and a final letter of warning would be adequate. It is also stated that the ethnic problem in Sri Lanka

is not even remotely connected to the first respondent's reinstatement in service.

9. Mr. Sanjay Mohan, learned counsel for the petitioner, contended that the first respondent had committed theft of air bag from the Madras

Office and when questioned he attempted to hide and thereafter when called for explanation, he accepted the guilt and tendered an apology.

Learned counsel further contended that if the offence of theft is not disputed, in so far as the International Air Lines are concerned, dismissal is the

only punishment. Theft has to be considered irrespective of the value of the articles and if so considered theft would never become trivial, but is

punishable under the Indian Penal Code. The Labour Court should keep in mind the nature of the duty performed by the employee viz., the first

respondent herein and also the status of the petitioner where the security must be of the highest order. The Labour Court has not given any reason

notwithstanding the fact that the act is trivial. Learned counsel for the petitioner further contended that when the petitioner lost confidence by

reason of the fact of not only the past conduct of the first respondent but also from the fact that the first respondent has stealthily removed the

original telex message received and marked the same before the Labour Court. Learned counsel further contended that the first respondent as a

Helper will have an access to every department and susceptible to various outside agencies. It is in these circumstances, learned counsel for the

petitioner contended that by reason of the fact that the petitioner had lost confidence in the first respondent, the Labour Court ought to have

confirmed the order of the petitioner, especially in the circumstances when the guilt is accepted and if the Labour Court felt that the punishment is

extremely severe, the Labour Court ought not to have reinstated the first respondent into service but could have provided adequate compensation.

10. Repelling the arguments of the learned counsel for the petitioner, Mr. N. G. R. Prasad, learned counsel appearing on behalf of the first

respondent, contended that the Labour Court exercised its discretion and has given reasons for reinstatement and it cannot be considered an

arbitrary or capricious. Learned counsel further contended that simply because the petitioner happens to be an International Carrier it cannot claim exemption. Learned counsel also contended that the imposition of extreme penalty of dismissal even in case of theft would depend upon the facts and circumstances of each case. Learned counsel further contended that the first respondent has no intention to commit theft and in such circumstances whether the dismissal was proper and denial of reinstatement is reasonable, is the question for consideration. Leaned counsel further contended that the offence stated to have been committed by the first respondent is only a trivial act and in which case the past record of service should be taken into account and that the first respondent had unblemished record of service and the petitioner has not suspended the first respondent even in respect of any offence alleged to have been committed by him, that the first respondent was given merit increment on consideration of his past services and consequently the reference to certain minor lapses cannot be pressed against the first respondent and the dismissal in those circumstances is a very harsh punishment. The Award of the Labour Court is sustainable and is not liable to be interfered with by this Court under Art. 226 of the Constitution of India.

11. In reply to the above contentions of the learned counsel for the first respondent, Mr. Sanjay Mohan, learned counsel for the petitioner, contended that in so far as the scope of Sec. 11-A of the Act is concerned that depends upon the facts and circumstances of each case and that the Labour Court has to examine the act of misconduct and that there was no intention on the part of the first respondent to commit theft has no basis for the reason that the Labour Court itself has accepted that this is a case of theft and in case of theft dismissal is the only punishment.

12. In support of his contentions, Mr. Sanjay Mohan, learned counsel for the petitioner, cited the decision *Seeralan (T) v. Second Additional Labour Court, Madras* and another, reported in 1986-II-LLJ-85. That was a case of theft by the employee of 102 canteen coupons valued at Rs.

24.48 Learned counsel relied on the following passage contained in paragraph 4, which is as follows (p. 86) :-

Regarding charge of theft, both the disciplinary authority and the Tribunal, on a meticulous analysis of evidence on record, have help that the

charge had been proved. Once such a finding is rendered, which is an offence punishable under Indian Penal code. It would be against interests of other workmen and industrial development, if adequate punishments are not imposed when offences under Indian Penal code are established. He could have been prosecuted. Company having chosen to proceed by a domestic enquiry, based on Standing Order, this court considers that there is very little scope for any existence of minor punishments for such derelictions. Committing theft had been considered as a penal offence in the interest of society to maintain law and order in the country and to strike out standards, when they occur in industries, would be detrimental to the interests of the Nation, if a different approach is made mainly because he is a workman under the Industrial Disputes Act. Hence the punishment imposed by the Tribunal is rather on the concessional side, and the fervent plea put forth by Sri Devadas, learned counsel for petitioner, to order reinstatement is an unreasonable contention.

13. Learned counsel for the petitioner also cited the decision *Ruby General Insurance Company Ltd., v. Chopra* (P. P.) 1970-I-LLJ-63 for the following proposition that once the petitioner/Management has lost the confidence in the employee, the employee cannot be reinstated but can be provided with adequate compensation. Learned counsel for the petitioner also cited the decision *Hindustan Steels Ltd., Rourkela v. Roy* (A. K.) and others 1970-I-LLJ-228. That was a case where the services of an employee were terminated on the basis of a police report received by the company, as it felt that it was hazardous or prejudicial to retain the employee in service on the ground of security. In the adjudication proceedings, the Industrial Tribunal held that the termination was punitive in nature and that the punishment was disproportionate and consequently the Tribunal awarded the relief of reinstatement with backwages. In the writ petition, the High court took the view that the Tribunal was right in holding that the termination was not legal and justified and in granting relief of reinstatement the Tribunal correctly followed the normal principle. On appeal, the Supreme Court has held that the right of the employer to discharge or dismiss an employee from his service was not absolute, but is subject to severe restrictions, that the normal relief in such cases was held to be reinstatement and only in exceptional or unusual circumstances where relief of

reinstatement was not expedient he proper relief could be payment of compensation and that such exceptional cases were those (i) where there had been strained relations between the employer and the employee (ii) where the post held by the aggrieved employee had been one of trust and confidence and (iii) where though discharge or dismissal was unsustainable owing to some infirmity in the impugned order, the employee was found guilty of act subversive of discipline. The Supreme Court has also held that no hard and fast rule could be laid down as to which of the circumstances would in a given case constitute an exception to the general rule; that the tribunal should confront the question whether the circumstances of the case require that an exception should be made and compensation would meet the ends of justice; that if the Tribunal were to exercise its discretion in disregard of such circumstances or principles laid down by judicial decisions. It would be either a case of no exercise of discretion or of one not legally exercised and the High Court in the exercise of its writ jurisdiction can interfere and cannot be content by saying that since the Tribunal had exercised its discretion it would not examine the circumstances of the case to consider whether or not such discretion was exercised properly and in accordance with well established principles and that if the High Court fails to do so, it would be refusal on its part to exercise its jurisdiction.

14. Learned counsel for the petitioner also relied on the following passage contained in paragraph 16 in the abovesaid decision (Hindustan Steels Ltd., case) which is as follows (p 235) :

But if the management truly believed that it was not possible to retain the workman in the company's service on grounds of security and consequently could not place confidence in him any longer, the present would be one of those exceptional cases where the general rule as to reinstatement could not properly be applied. This of course does not mean that in every case where the employer says that he has lost confidence in the workman and, therefore, has terminated his service, that reinstatement cannot be granted and the tribunal has to award compensation. On the other hand, if on an examination of all the circumstances of the case, the tribunal comes to the conclusion that the apprehensions of the employer were genuine and the employer truly felt that it was hazardous or

prejudicial to the interests of the industry to retain the workman in his service on grounds of security, the case would be proper one where compensation would meet the ends of justice.

15. The decision in Ruby General Insurance Company Ltd., reported in (1970-I-LLJ-63) relates to the termination of a stenographer by the company. The Industrial Tribunal held that the termination order was not termination simpliciter but was in effect an order of dismissal and consequently set aside the order of termination and ordered reinstatement with attendant benefits. Before the Supreme Court, it appeared that the company conceded that the order of termination was not valid; but it was contended that the relief of reinstatement granted to him (employee) by the Industrial Tribunal was unjustified. The Supreme Court observed that the employee was a stenographer holding a position of trust and confidence and that the employee retained the copies of confidential letters dictated to him in regard to other concerns in which the company was interested for the purpose of using them for his own purposes. In the circumstances, the Supreme Court held that the Tribunal ought to have awarded suitable compensation to the employee. The Supreme Court has also observed that there can be no doubt that the position of a stenographer in such an establishment would be one of confidence and trust as he would be taking down dictation and typing out all kinds of matters including sometimes confidential and even secret matters. If the regional manager were to entertain a feeling that, if reinstated, the respondent would in future also retain with him copies of documents of a confidential nature whenever the respondent felt that such retention would be of use of advantage to him, such a feeling on the part of the regional manager that he can no longer trust respondent with any confidential matter cannot be regarded as altogether unjustified. If he cannot repose confidence in the respondent, if reinstated, he cannot make any use of his service as a stenographer. In the circumstances, the Supreme Court has observed that the Tribunal ought to have awarded suitable compensation instead of reinstatement.

16. Learned counsel for the petitioner next cited the decision Francis Klein & Co. (P) Ltd., v. Workmen reported in 1971-II-LLJ-615. That was a case of termination of service of a darwan on the ground of loss of confidence

of the employer. The Tribunal found that the company was not justified in dismissing the employee and directed that the company should reinstate him with backwages. In that case, the Supreme Court has observed that when an employer loses confidence in his employee particularly in respect of a person who is discharging an office of trust and confidence there can be no justification for directing his reinstatement and that if once the company has lost confidence in its employee it is idle to ask them to employ such a person in another job. Consequently, the Supreme Court set aside the Award of the Industrial Tribunal and directed the appellant/company to pay Rs. 5000/- as compensation for termination on account of loss of confidence.

17. Learned counsel for the petitioner also cited the decision *Anil Kumar Chakraborty and another v. Saraswathipur Tea Company Ltd.*, and

others, reported in 1982-I-LLJ-483. That was a case of termination of the services of an employee after holding domestic enquiry, wherein he was

found guilty of the charges. The Industrial Tribunal held that the enquiry was unfair and that the charges had not been proved by the Management

and consequently set aside the order of termination and the employee was directed to be reinstated with full back wages. Learned single Judge of

the High Court confirmed the Tribunal's Award, but on appeal the Division Bench reversed the decision of the Tribunal as well as of the learned

single judge holding that the domestic enquiry held by the Management was quite fair and proper and allowed the appeal. The Supreme Court on

appeal proceeded on the basis that even if the order of dismissal was unsustainable, it was not a case where any order of reinstatement could be

made. The Supreme Court has further observed that the employee held the position of trust and confidence and following the decision in *Assam*

Oil Company's case 1960-I-LLJ-587 and the decision in *Ruby General Insurance Co. v. Chopra*, (supra) confirmed the order of the Division

Bench of the High Court and directed the company to make a lumpsum payment as just and fair compensation in full satisfaction of all his claims

for wrongful dismissal from service.

18. The learned counsel for the petitioner next cited the decision *Chandulal v. The Management of M/s. Pan American World Airways Inc.*

reported in 1985-II-LLJ-181. This was a case where the foreign Airlines

terminated the services of one of its employees. The Labour Court though held that the Management was justified in terminating the services on the basis of lack of confidence, thereafter as a result of the directions issued by the Supreme Court, the Labour Court returned a finding to the effect that the termination of the service of the employee amounted to retrenchment in law. The Supreme Court, following the earlier decisions, observed that the stand of the respondent that the Management had lost confidence in the employee appellant and that there had been some pleading about the importance of the role of confidence in the business set-up of the respondent and without examining the tenability of the stand on loss of confidence as a defence to reinstatement and accepting the allegations advanced by the respondent that there has been loss of confidence, the Supreme Court was of the view that while the termination of service of the appellant was held to be bad, he need not be reinstated in service and on the other hand he should be adequately compensated. In that case, the Supreme Court having taken into account the back wages payable if the services of the employee were restored ultimately quantified the compensation payable to the appellant/employee at Rs. 2 lakhs.

19. Learned counsel for the petitioner further cited the decision *South India Sugars Ltd., Mundiambakkam v. First Additional Labour Court, Madras* and another reported in 1989-II-LLN-1044. That was a case of termination of the services of a workman for having assaulted the security guard of the employer. After holding the necessary enquiry, the employer dismissed the workman. One of the workmen raised an industrial dispute. Though the Labour Court found that the second respondent was guilty of the charges levelled against him, took the view that the punishment awarded was highly disproportionate. In the writ petition filed by the employer, this court had occasion to consider the scope of Sec. 11-A of the Act and after considering the decisions of the Supreme Court, observed that after introduction of Sec. 11-A in the Act, a power has been conferred on the Labour Court or the Industrial Tribunal to interfere with the punishment awarded by the management if it is satisfied that the punishment is not justified on the facts and circumstances of the case, but the power cannot be exercised arbitrarily. It is also observed that the power of the Tribunal has to be exercised on the facts and circumstances of the

case and it is not a mechanical exercise of discretion. It was held that there should be proper reason for the Tribunal to interfere with the punishment awarded by the management and also observed that having held that the second respondent is guilty of riotous and disorderly behaviour within the factory premises during working hours, there is nothing on record to show that the punishment imposed on the second respondent by the management is highly disproportionate to the misconduct committed by him and hence the Award passed by the Labour Court is wholly unjustified.

20. Learned counsel for the petitioner next cited the decision *Workmen of Bharat Fritz Werner (Private) Ltd. v. Bharat Fritz Werner (Private)*

Ltd., and another reported in 1990-II-LLJ-226. That was a case of dismissal of 15 workmen who were found guilty of misconduct by the

Inquiring Authority. On reference, the Tribunal held that the enquiry was not fair and proper. The Management preferred a writ petition before the

High court and the learned single Judge did not agree with the findings of the Tribunal, but, however, held that the enquiry was bad in law and

ultimately considering all other circumstances, the learned single Judge directed the Management to compensate the workmen for loss of

employment caused by the orders of dismissal against them. The Supreme Court while considering the above matter observed that reinstatement

had not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the

employee, when the post held by the aggrieved employee had been one of trust and confidence or where though dismissal or discharge was

unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to

the interests of the industry and that in cases where it is felt that it will not be desirable or expedient to direct reinstatement the workman is

compensated monetarily by awarding compensation in lieu of reinstatement for loss of future employment.

21. Learned counsel for the petitioner also cited the decision *Management of Madras Fertilizers Ltd., Manali, Madras v. First Addl. Labour*

Court, Madras and others reported in 1990-I-LLJ-298 wherein it was held that the High Court itself can consider instead of sending back the

matter to the Tribunal.

22. In reply, Mr. N. G. R. Prasad, learned counsel for the first respondent cited the decision *Management of Binny Limited v. Additional Labour*

Court, Madras and another reported in 1979-II-LLJ-280. That was a case where the services of the workman were terminated following a

domestic enquiry. When the matter came up before the Labour Court, it found that the workman was dismissed following a properly conducted

enquiry, but, however, it modified the punishment. The Management challenged the Award. A Division Bench of this Court held that Sec. 11-A of

the Act enables interference of the Labour Court only if the Labour Court comes to the conclusion that the dismissal or discharge is not justified

with effective substance. This Court also observed that it is not the case of the respondent that the worker was found guilty of a similar misconduct

on any earlier occasion during his period of service and that this important factor has weighed very much with the Labour Court and it was very

well justified on this singular circumstance to interfere under Sec. 11-A of the Act. The ratio of the said decision appears to be that after the

introduction of Sec. 11-A of the Act, the Labour Court or the Tribunal concerned has discretion to interfere with the punishment imposed by the

domestic Tribunal even though there is no infirmity in the enquiry held by the domestic Tribunal.

23. Learned counsel for the first respondent also cited the decision *Rama Kant Misra v. The State of U. P. and others* reported in 1982-II-LLJ-

472. This was a case where an employee having a clean record of service of 14 years was found guilty of conduct likely to cause breach of peace

threatening an employee within the premises and conduct prejudicial to good order and discipline, was dismissed from service. The Labour Court

upheld the dismissal. The writ petition filed by the aggrieved employee was also dismissed. On appeal the Supreme Court considered the scope of

Sec. 11-A of the Industrial Disputes Act and observed that the order of discharge or dismissal was not justified in the facts and circumstances of

the case. The Supreme Court has also observed that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of

dismissal or discharge was not justified in the facts and circumstances of the was meaning thereby that the punishment was either disproportionately

heavy or excessive and that it is a well recognised principle of jurisprudence, which permits penalty to be imposed for misconduct, that the penalty

must be commensurate with the gravity of the offence charged.

24. Learned counsel for the first respondent also cited the decision *R. M. Parmar v. Gujarat Electricity Board* reported in 1983-I-LLJ-261. This

was a case where the workman was dismissed from service. The Labour Court held that there was no infirmity in the order of dismissal and that it

was not a case where lesser punishment deserved to be awarded in exercise of powers under Sec. 11-A of the Act. The Gujarat High Court has

observed that the Labour Court will, doubtless, take into account the circumstance that the alleged offence was in regard to scrap materials worth

less than Rs. 50 and that the employee concerned was not holding any sensitive post where he has to deal with stores etc. The Gujarat High Court

remitted the matter to the Labour Court back for consideration for the reasons stated therein. Learned counsel cited the following passage

contained in paragraph 6(9) in the said decision which is as follows; (p. 265)

Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal

from service. More particularly when he does not hold a sensitive post of trust (pilferage by cashier or by a store-keeper from the stores in his

charge, for instance, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with

temptation, ought not to, but may, yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an

age when even the rich commit economic offences to get richer and do so by and large with impunity. (And even tax evasion or possession of

black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore, not called for when a poor worker

yields to a momentary temptation and commits an offence which often passes under the honourable name of kleptomania when committed by the

rich.

25. Learned counsel for the first respondent next cited the decision *Hindustan Machine Tools Limited, Bangalore v. Mohd. Usman* and another

reported in 1983-II-LLJ-386. That was a case where the Supreme Court has considered the scope of Sec. 11-A of the Act and observed that

Sec. 11-A confers powers on the Labour Court to evaluate the severity of misconduct and to assess whether punishment imposed by the

employer is commensurate with the gravity of misconduct. However, the Supreme Court has said that the Supreme Court will not go into the adequacy or inadequacy of material for interference with the order of the Labour Court.

26. Learned counsel for the first respondent also cited the decision. *I. Miller Ltd., Madras v. Additional Labour Court, Madras and others* reported in 1989-II-LLN-325. This was a case where the employee was dismissed from service after domestic enquiry for wilful disobedience of lawful orders of superiors and for using abusive language. The Labour Court on the facts of that case awarded monetary compensation instead of reinstatement. Learned single Judge of this Court set aside the order of the Labour Court and ordered reinstatement with continuity of service and attendant benefits, but without backwages. The Division Bench of this Court, on appeal upheld the order of the learned single Judge holding that the relief of reinstatement ought not to be denied to the workman, except when the same is strictly warranted by the gravity of the proved charges and that flimsy considerations like embarrassment to management should never be the deciding factor in the matter or reinstatement of workmen.

27. Learned counsel for the first respondent further cited the decision *Tractors and Farm Equipment Ltd., madras (represented by Personnel Manager) v. R. Venkatraman and another* reported in 1990-II-LLJ-468 This was a case where the services of the workman were terminated for slapping while on duty and reported the matter to the management. On reference, the Labour court upheld the propriety of the disciplinary action on merits. On the question of punishment, the Labour court chose to interfere and directed reinstatement of the employee, but denying him the backwages from the date of suspension till the date of reinstatement. That was upheld by the learned single Judge of this Court and on appeal the Division Bench of this court held that once the power under Sec. 11-A has been exercised, the High Court, in the absence of any important legal principle, should not undertake to re-examine the question of adequacy or inadequacy of the materials for interference.

28. Considering the authorities cited by both sides, it is clear that in pursuance of the power conferred under Sec. 11-A of the Act, the Labour

Court has discretion to interfere with the punishment imposed by the domestic Tribunal for valid and sound reasons. The only question is while

exercising the power the Labour Court has to take into consideration the entire facts and circumstances of the case to decide as to whether reinstatement should be ordered or any compensation in lieu of reinstatement should be awarded. Learned counsel for the petitioner cited the decision Sri Gopalakrishna Mills Pvt. Ltd., v. Labour Court and another reported in 1980-I-LLJ-425 and Seeralan v. Additional Labour Court, madras & another reported in (1986-II-LLJ-85) to the effect that once the charge was found proved there was very little scope for generosity to be shown or to bring into existence the minor punishment, that the motive of the workman in doing the act attributed to him is not material, that the length of service is not relevant in the imposition of punishment for proved misconduct and that the leniency in the matter of punishment would depend on the nature of misconduct. The Division Bench of this Court in those decisions did not interfere with the punishment of termination of service of the employees concerned.

29. The contention put forward by Mr. Sanjay Mohan is that the first respondent committed theft, that was found proved and that such a finding was not disturbed and while so, the dismissal is the only punishment. Theft has to be considered as a serious and penal offence irrespective of the value of the articles and if so considered theft would never become trivial and is punishable under the Indian Penal Code. Learned counsel contended that the labour Court has not considered with reference to the status of the petitioner where the security must be of the highest order and when the petitioner lost confidence by reason of not only the past conduct of the first respondent, but also from the fact that the first respondent has stealthily removed the telex message received and marked the same before the Labour court and hence reinstatement is not proper; but in case the Labour Court feels that the employee may be compensated, adequate compensation be provided to the employee concerned. In support of the contention when there is loss of confidence, instead of reinstatement adequate compensation should have been awarded, learned counsel cited the decisions, Hindustan Steels Ltd., Rourkela Ruby General Insurance Company Ltd., M/s. Francis Klein & Co. (P) Ltd. Anil Kumar Chakraborty and another, Chandulal's case, South India Sugars Ltd., Mondiambakkam and Workmen of Bharat Fritz

Werner (Private) Ltd., The ratio laid down in these decision is that the Tribunal has discretion to award compensation instead of reinstatement if he circumstances of particular case are unusual or exceptional so as to make reinstatement inexpedient or improper and that the Tribunal has to exercise its discretion judicially and in accordance with the well recognised principles and has to examine carefully the circumstances of the case and decide whether such a case is one of exception to the general rule of reinstatement. It is also clear from the aforesaid decisions that when a dismissed employee held an important position, a position of trust and confidence, and when the employer had lost confidence in the employee, reinstatement was held to be not fair. It is also held that where the employer loses confidence in its employee, who is discharging an office of trust and confidence, there is no justification for directing his reinstatement. When there is a loss of confidence, compensation would be the only adequate relief. It is also held that the power of the Tribunal has to be exercised on the facts and circumstances of the case and it is not a mechanical exercise of discretion and there should be proper reasons for the Tribunal to interfere with the punishment awarded by the Management. When the Labour Court having held that the delinquent was guilty of charges there was nothing on record to show that the punishment imposed was highly disproportionate, in such circumstances the Award interfering with the punishment was unjustified. It is also held that reinstatement had not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of trust and confidence, though the order of dismissal was unsustainable owing to some infirmity in the impugned order and in case where it was felt that it would not be desirable or expedient to direct reinstatement, the workman may be provided monetarily by awarding compensation instead of reinstatement for loss of future employment.

30. It is also clear from the ratio of the said decisions that where there had been strained relations between the employer and employee and when the post held by the aggrieved employee had been one of trust and confidence, though the order of dismissal is unsustainable, it would be inexpedient to direct reinstatement.

31. The contentions put forward on behalf of the first respondent are to the effect that the Labour Court exercised its discretion and has given reasons for reinstatement and that simply because the petitioner happened to be an International Carrier, it cannot claim exception, that the offence committed by the first respondent is only trivial and the past record of service should be taken into account and the reference of minor lapses cannot be pressed against the first respondent and that the decisions referred to by the learned counsel appearing on behalf of the first respondent relates to the extent of the power conferred on the Labour Court or Tribunal under Sec. 11-A of the Act. It is clear from the decisions, referred to by the learned counsel for the first respondent, that the labour Court/Tribunal has jurisdiction to interfere with the imposition of penalty awarded by the domestic Tribunal for valid reasons, having due regard to the entire facts and circumstances of the case. The labour Court should evaluate the severity of misconduct and assess whether the punishment is commensurate with the gravity of the misconduct and that the relief of reinstatement ought not to be denied to the workman, except when the same is strictly warranted by the gravity of proved charges and once the labour Court has made evaluation of the severity of misconduct for imposing punishment and exercised the power properly, this Court, in the absence of important legal principle, should not undertake to reexamine the question of adequacy or inadequacy of the materials.

32. It is not in dispute that the petitioner committed theft of the article in question, that the charge in this behalf was held proved and that the finding in this behalf was not disturbed. The Labour Court has considered whether the punishment of dismissal from service imposed on the first respondent is proportionate to the gravity of the charges held proved. In the instant case, the Labour Court considered that the past record does not constitute sufficient basis for imposing the drastic punishment of dismissal and that the offence which held proved against the petitioner is only a trivial act of misconduct and consequently came to the conclusion that the punishment imposed on the first respondent is grossly disproportionate to the gravity of the misconduct committed by the first respondent and it is clearly excessive. Having come to the conclusion that the punishment imposed on the first respondent is disproportionate to the gravity of the misconduct committed by the first respondent, the Labour Court has to

considers whether, on the facts and circumstances of the case and having due regard to the conduct of the first respondent, the reinstatement could be ordered or adequate compensation be awarded in lieu of reinstatement. In this context, the Labour Court has considered that the first respondent was only a Helper and that he was not holding the post of confidence to entail any security risk and that his functions were mainly running various errands in regard to the office work apart from cleaning the office and serving tea and coffee to the other member of staff and that the plea of loss of confidence has to be rejected. While so doing, the Labour Court has failed to exercise its discretion in accordance with the well recognised principle as set out in the decisions, referred to hereinabove. The Labour Court has discretion to award compensation in lieu of reinstatement, if the circumstances of a particular case is an exception to make reinstatement and that the Labour Court has to exercise its discretion judicially and that the Tribunal cannot exercise its discretion mechanically. The Tribunal has to take note of the fact that the first respondent was awarded censure and warnings on earlier occasions and ultimately was dismissed from service on the charge of misconduct for having committed theft and that apart, the first respondent stealthily removed the telex messages from the office and marked the same during the enquiry before the Labour Court. Even though the first respondent has occupied the post of the Helper, the first respondent can have access to commercial office and to the International Airport Terminal and has to carry mails and important confidential records for onward transmission to the Head Office at Sri Lanka and to collect deliveries from the Airport Office and is susceptible to outside Agencies, especially in these days of ethnic problem. The petitioner has to take all precautions for security of the petitioner's office, which is likely to be the target of attack as a result of ethnic problem. The safety of the passengers as well as their luggage is also an important factor which the Tribunal has to consider. It is in these circumstances, the petitioner has pleaded that the petitioner has lost confidence in the first respondent and consequently the first respondent should not be reinstated in service, but could be compensated.

33. The conclusion arrived at by the Labour Court that the offence held proved against the first respondent is trivial may be relevant for the

purpose of interference with the punishment, but for the purpose of reinstatement, the Labour Court ought to have considered the totality of the aforesaid facts and circumstances to decide as to whether the first respondent should be reinstated or be adequately compensated in lieu of reinstatement. Having failed to do so, the order of the Labour Court in so far as it relates to reinstatement of the first respondent is concerned, instead of awarding compensation, cannot be said to be sustainable.

34. Considering the aforesaid contentions put forward by the learned counsel for the petitioner, the contention of the learned counsel for the petitioner that the petitioner lost confidence cannot be said to be without merits and as such the same has necessarily to be accepted. While so, this is not a fit and proper case where reinstatement could be awarded, instead the first respondent should be adequately compensated. In the view that I have taken, the contention put forward by the learned counsel for the first respondent to sustain reinstatement instead of compensation cannot be, in the instant case, sustainable; with the result the order of reinstatement of the first respondent made by the Tribunal is hereby set aside and consequently the first respondent is entitled to compensation, in lieu of reinstatement.

35. The last pay drawn by the first respondent is about Rs. 804/- p.m. It is stated that the present pay is Rs. 2000/- p.m. The petitioner was discharged from service with effect from 18th November 1981. During the pendency of the proceedings, the first respondent has been paid more than Rs. 40,000/-. While awarding compensation, this Court has to take into account that in case of reinstatement the first respondent is entitled to backwages from the date of termination and is also entitled to future wages. Taking into account the aforesaid factors and the payment of Rs. 40,000/- during the pendency of these proceedings, award of a sum of Rs. 1,60,000/- would be he adequate compensation so that the first respondent could obtain a total sum of rupees two lakhs by way of compensation instead of reinstatement in service. If the amount of rupees 1,60,000/- is invested in any Government of Financial Corporation, the first respondent would be in a position to get monthly interest equivalent to the present pay which he can receive in case of reinstatement. In these circumstances, the impugned order of the labour Court in so far as it relates

to reinstatement and consequent benefits is set aside and the petitioner is directed to pay to the first respondent a sum of Rs. 1,60,000/-, in

addition to the amount from this date, towards just and reasonable compensation payable to the first respondent in lieu of reinstatement. The writ

petition is allowed in part. However, there will be no order as to costs.