
(1999) 05 CAL CK 0019

In the Calcutta High Court

Case No : Matrimonial No. 3128 of 1998 with MAT. No. 3263 of 1998

Anadi Bhusan Das

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 13-05-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 21

General Clauses Act, 1897 — Section 16, 3(7)

Road Transport Corporations Act, 1950 — Section 14(2), 14(3), 19(1), 3, 34

Citation : (1999) 2 ILR (Cal) 393

Hon'ble Judges : Shyamal Kumar Sen, Acting C.J.;D.P. Kundu, J

Bench : Division Bench

Advocate : Tapan Kumar Sengupta and Debayan Bera, for the Appellant;S.B. Bhunia and Pinaki Ranjan Mitra, for the Respondent

Judgement

D.R. Kundu, J.—these two appeals are arising out of the judgment and order dated August 7, 1998 passed by S.B. Sinha, J. in C.R. No. 3343(W) of 1983." Both the appeals have been heard together.

2. The writ Petitioner was an employee of Durgapur State Transport Corporation (hereinafter referred to as the said Corporation) and posted as conductor of the bus. By an order dated October 6, 1982 the writ Petitioner was placed under suspension. The relevant portion of the order of suspension is quoted hereinbelow:

Serious allegation of forgery and corrupt practice in respect of Ticket No. AAQ-51781 issued on 22.9.82 by Shri Anadi Bhusan Das, Conductor of Durgapur - Puri Route has been brought to the notice of the undersigned.

Pending enquiry into the matter Shri Das is placed under suspension with immediate effect. Formal charges will follow.

During the period of suspension he is entitled to subsistence grant @ 50% of the basic pay full D.A. and other allowances as per rule.

He is directed to return his Identity Card Leather Bag, etc. within 18 hrs. from the date of receipt of this letter.

3. By a charge-sheet dated December 8, 1982 it was proposed to hold an enquiry under r. 7(1)(a) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 (hereinafter referred to as W.B.S. (C.C.A.) Rules, against the writ Petitioner in respect of the following charges:

Statement of articles of charge framed against shri anadi das a conductor of D.S.T. corporation

I hereby charge you Shri Anadi Das with serious allegation of forgery and corrupt practice unbecoming of an employee of this Corporation in:

Article of Charge - I.

That on 23.9.82 when the Corporation's vehicle No. WGH-5198 of Durgapur-Puri Route come to Ourgapur bus-stand after completion its help from Puri you collected a passengers foil ticket bearing No. AAQ-51781 worth Rs. 128.00 (journey from Capital to Durgapur) from a passenger issued for a group consisting of three passengers, tore it and threw it away.

The original copy of said ticket No. AAQ-51781 dt. 22.9.82 was later forget by you to show that the fare collected from that ticket was Rs. 42.00 and by this illegal act, you misappropriated Corporation's revenue amounting to Rs. 84.00 (Rupees eighty-four).

Thereafter an enquiry was held in respect of the charges levelled against the writ Petitioner and after conclusion of the enquiry the disciplinary authority by an order dated September 18, 1986 removal the writ Petitioner, from the service of the Corporation. The relevant portions from the order of removal are quoted hereinbelow:

Therefore, considering the unsatisfactory performance of Shri Anadi Bhusan Das, Conductor in post I do not find any alternative have to remove his from the service of this Corporation for this very grave charge of forgery and criminal misappropriation of Corporation's revenue.

Hence, I order that Shri Anadi Bhusan Das the delinquent Conductor be removed from the service of this Corporation with immediate effect. Any over payment made to him during his service in the Corporation be recovered from his dues. The period of his suspension is confirmed.

4. In the writ proceeding; the writ Petitioner had challenged the order of suspension and entire disciplinary proceeding including the order of removal him from the service of the Corporation. S.B. Sinha, J. by his judgment and order dated August 7, 1998 disposed of the writ proceeding with certain directions. The operative part of the said judgment and order is quoted hereinbelow:

No exception to the said decision can be taken. The Durgapur State transport

Corporation in exercise of its executive power in absence of a Rule framed under the Road Transport Corporation Act, would adopt the West Bengai (Classification, Control and Appeal) Rules. It is not the case of the Petitioner that the provision of the said rules have not been complied with. In any event, even the said rules are not applicable in case of the Petitioner, an employer is entitled to pass an order to initiate a disciplinary proceeding for a misconduct committed by its employees. Such a proceeding, however, must conform to the principle of natural justice. As in this case no allegation has been made that there has been a violation of principle of natural justice. I am of the opinion, that no exception to the final order passed by the Disciplinary authority can be taken. So far as the submission of Mr. Bhunra to the effect that the order of punishment is disproportionate to the misconduct committed by the Petitioner is concerned in view of the recent decision of the Apex Court in Union of India and another Vs. G. Ganayutham (Dead) by LR's., it is absolutely clear that this Court has limited role to play. Doctrine of proportion as has been adumbrated by the Supreme Court is confirmed only to question of irrationality as enunciated in *Wednesbury's* unreasonableness. The power of an employer to pass an order of punishment normally is the prerogative of the employer. If by reason of such exercise no arbitrariness has been committed the question of interference therewith does not arise. However, in the event the West Bengal Services (Classification, Control and Appeal) Rules, had not been validity adopted by the Respondent-corporation, the Petitioner would be entitled to be full pay during the period of suspension, as it is well known that in absence of any statutory provisions a person cannot be deprived from his salary although the employer has a right to suspend an employee in the sense that no works be taken from him. Placing an employee under suspension of payment of subsistence allowance must occur from a right conferred upon the employer either under a statute or standing order framed under the Industrial Employment Standing Orders) Act.

In *Sabir Hussain Case* (Supra) the fact or the matter was absolutely different. Furthermore, this Court is bound to take notice of the subsequent decision of the Supreme Court which has considered the doctrine of proportionately.

This application is disposed of with the aforementioned direction.

5. The said Corporation being aggrieved toy and dissatisfied with the aforesaid judgment and order dated August 7, 1998, so far the same relates to direction upon the Corporation to pay the Petitioner full salary during the period of suspension, preferred an appeal being M.A.T. No. 3263 of 1998. The writ Petitioner being aggrieved by and dissatisfied with the aforesaid judgment and order dated August 7, 1998 preferred an appeal being) M.A.T. No. 3128 of 1998.

6. Before us the Learned Advocate for the Appellant-writ petitionee argued that W.B.S. (CCA.) Rules 1971 have no manner of application so far the writ Petitioner is concerned and, therefore, the entire disciplinary proceeding was null and void, since the said disciplinary proceeding was purported to have been held under the provisions of W.B.S. (CCA.) Rules, 1971. The Learned Advocate for the writ

Petitioner further argued that the penalty of removal from service is disproportionate to the gravity of the charges levelled against the writ Petitioner. The Learned Advocate for the Corporation argued that by the State Government's order the provisions of W.B.S. (CCA.) Rules, 1971 were made applicable to the employees of the Corporation and, therefore, the disciplinary proceeding including the order of suspension and the order of removal are legal and valid. The Learned Advocate for the Corporation further argues that even if the Court can, in exercise of its power of judicial review, interfere with the punishment imposed upon an employee on the ground that such punishment is disproportionate to the gravity of the misconduct then and then also in the instant case the allegations against the writ Petitioner being forgery and misappropriation of Corporation's money, punishment of removal is not disproportionate to the gravity of the misconduct. In these appeals the following questions fall for determination.

1. Whether W.B.S. (CCA.) Rules, 1971 were legally made applicable to the writ Petitioner ? if not, then what should be its effect on the disciplinary proceeding held against the writ Petitioner?

2. Whether writ Petitioner is entitled to full salary for the period spent under suspension ?

3. Whether Court can, in exercise of its power of judicial review, interfere with the punishment imposed upon an employee on the ground that punishment is disproportionate to the gravity of the proved misconduct ?

4. If the answer to the question No. 3 is in affirmative then whether in the instant case punishment imposed upon the writ Petitioner is disproportionate to the gravity of the proved charges?

7. The said Corporation was created u/s 3 of the Road Transport Corporation Act, 1950 (hereinafter referred to as the said Act). Therefore, the said Corporation is guided and governed by the provisions of the said Act. Sections 14(2), 14(3), 19(1)(c) and 34 of the said Act are the relevant provisions for the purpose of the present case. Section 14(2) expressly confers upon the Corporation the incidental power to appoint such officers and servants as it considers necessary for the efficient performance of its functions. Section 14(3) provides that the conditions of appointment of service and the scales of pay of its officers and servants shall be such as may, subject to the provisions of Section 34, be determined by regulations made under the Act. Section 19(1)(c) empowers the Corporation to provide for its employees suitable conditions of service. The conjoint effect of Sections 14(3)(b), 34 and 45 (2)(c) of the said Act is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government u/s 34 and the regulations, if any, framed u/s 45(2)(c). This view is supported by a decision of Supreme Court in Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char, the relevant lines from para. 3 of the Reported decision are

quoted hereinbelow:

Section 14(2) expressly confers upon the corporation the incidental power to appoint such officers and servants as it considers necessary for the efficient performance of its functions. Section 19(1)(c) empowers it to provide for its employees suitable conditions of service. Section 14(3) provides that the conditions of appointment and service and the scales of pay of its officers and servants shall be such as may, subject to the provisions of Section 34 be determined by regulations made under the Act. Section 45(2)(c) empowers the Corporation to frame regulations with the previous sanction of the State Government prescribing the conditions of appointment service and scales of pay of the officers and servants. If the State Government issues any directions u/s 34 relating to the recruitment and conditions of service of the employees, the Corporation must obey those directions. The conjoint effect of Sections 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government u/s 34 and the regulations, if any, framed u/s 45(2)(c).

8. In affidavit-in-Opposition filed on behalf of the Corporation affirmed by Shri Pranab Kumar banerjee it was stated, inter alia, as follows:

I further state that by Memo No. 1598 WT/85 - 16/ 80 dated 4.2.86 the State Govt. has made it clear that the provisions of West Bengal Services (Classification, Control and Appeal) Rules, 1971 shall apply of the employees of the Corporation.

Section 34(1) of the said Act clearly laid down that the State Government may, after consultation with the Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks. Therefore, u/s 34(1) of the said Act State Government is empowered to give instruction to the Corporation to be followed by the Corporation regarding conditions of service of the Corporation's employees.

9. In the instant case the State Government by Memo No. 1598 WT/85 - 16/80 dated February 14, 1986 made it clear that the provisions of parts IV, v. and VI of the W.B.S. (CCA.) Rules, 1971 relating to suspension, discipline and appeal shall apply mutatis mutandis to the employees of the Corporation. The relevant lines from the aforesaid Memo dated February 14, 1986 are quoted hereinbelow:

In exercise of the powers conferred u/s 34 of the Road Transport Corporation Act, 1950 (Act IXIV of 1950) the Governor, after consultation with the Ourgapur State Transport Corporation, a Road Transport established u/s 3 of the said Act (hereinafter referred to as the said Corporation) hereby directs that pending the framing of suitable service regulations for the employees of the said Corporation, the provisions of Parts IV, v. and VI of the West Bengal Services (Classification,

Control and Appeal) Rules, 1971 relating to suspension, Discipline and Appeals shall apply mutatis mutandis to the employees of the said Corporation.

A bare reading of the said Memo, shows that the provisions of W.B.S. (CCA.) Rules, 1971 were made applicable to the employees of the Corporation prospectively. Neither by expressed words nor by necessary implication the provisions of W.B.S. (CCA.) Rules, 1971 were made applicable to the employees of the Corporation retrospectively.

10. There remains no doubt that though the Petitioner was placed under suspension and charges against the Petitioner were framed in purported exercise of power under W.B.S. (CCA.) Rules, 1971 but at that material time the provisions of W.B.S. (CCA.) Rules, 1971 were not made applicable to the employees of the Corporation. It is not the case of the Respondents that at the relevant time Corporation adopted W.B.S. (CCA.) Rules, 1971 as service conditions of its employees. Does it render suspension of the Petitioner and disciplinary proceeding including framing of charges against the Petitioner as illegal, without jurisdiction or otherwise bad in law?

11. It is now well settled principle of law that if the exercise of a power can be traced to a legitimate source the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question, See: J.K. Steel Ltd. Vs. Union of India (UOI), Therefore, we have to see whether exercise of power by placing the Petitioner under suspension and by initiating the disciplinary proceeding can be traced to a legitimate source. If such legitimate source can be traced out then the fact that such powers were purported to have been exercised under W.B.S. (CCA.) Rules, 1971 would not vitiate the exercise of the power in question. We have already referred to Section 14(2) of the said Act which empowers the Corporation to appoint such officers and servants as it considers necessary for the efficient performance of its functions. It is not in dispute that the said Act is a "Central Act" as defined in Section 3(7) of the General Clauses Act, 1897. Section 16 of the General Clauses Act, 1897 reads as follows:

Power to appoint to include power to suspend or dismiss. -- where, by any (Central Act) or Regulation a power to make any appointment is conferred, then, unless a different intention appears, the authority having (for the time being) power to make the appointment shall also have power to suspend or dismiss any person appointed (whether by itself or any other authority) in exercise of that power.

In view of above quoted Section 16, the Corporation can place its employees under suspension and can also terminate the service of its employees. It is now well settled principle that power to terminate service is a necessary adjunct of power to appoint and is exercised as an incident to or consequence of that power. See: Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, Power to terminate service includes power to terminate

service as a penal measure. Such power to terminate service as a penal measure can be exercised only in accordance with the procedures established by law. In absence of any statutory or prescribed procedure, compliance of principles of natural justice is a requisite condition precedent for exercising the power of termination as a penal measure. In the instant case the writ Petitioner did not complain of any violation of principles of natural justice. At the relevant time there were no statutory or prescribed procedures which were required to be followed by the Corporation for the purpose of placing the Petitioner under suspension or for initiating a departmental proceeding against the Petitioner or for terminating the service of the Petitioner as a penal measure. Therefore, the Corporation was required to follow the principles of natural justice. Since no allegation had been made by the Petitioner that his service was terminated in violation of the principles of natural justice. We are of the view that the Petitioner was placed under suspension and departmental enquiry against the Petitioner was initiated in proper exercise of power. It is also important to note here that the Petitioner did not complain of any violation of W.B.S. (CCA.) Rules, 1971. Under these circumstances, we are of the view that order terminating service of the Petitioner was also not without jurisdiction, power or authority.

12. Power of the Corporation to suspend the Petitioner may be viewed from another angle. There is a distinction between suspending the contract of service of an employee and suspending an employee from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is also an implied term in every contract of service. In the instant case the Petitioner was placed under interim suspension and thereby he was suspended from performing the duties of his office on the basis that the contract is subsisting. This view is supported by the observation made by a Bench of three Judges of Supreme Court in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, of the reported decision it has been observed as follows:

In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey.

13. In para. 4 of the reported decision in *B.R. Pateiw* case it was observed as follows:

The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If

there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment of rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension the payment will be made in accordance therewith.

In the instant case no express term as relating to payment during the period of suspension has been brought to our notice. No statutory provision or rule has been brought to our notice regarding payment during the period of suspension. Under these circumstances, following the principles laid down in B.R. Patel(Supra) case, we are of the view that the Petitioner is entitled to his full remuneration for the entire period of his suspension.

14. Now we shall deal with the question whether Court can in exercise of its power of judicial review interfere with the punishment imposed upon an employee on the ground that the punishment imposed is disproportionate to the gravity of the misconduct. The Learned Advocates for the both sides referred to the following decisions in support of their respective claims:

1. M/s. Industrial Chemicals Vs. Collector of Central Excise, Bombay-I,
2. Union of India and another Vs. G. Ganayutham (Dead) by LRs.,
3. B.C. Chaturvedi Vs. Union of India and others,
4. Union of India and another Vs. G. Ganayutham (Dead) by LRs.,
5. Colour-Chem. Limited v. A.L. Alasporkar and Ors. AIR 1998 S.C. 949.
6. Sanchalakshri and Anr. v. Vijayakumar Raghuvirprasad Mehta and Anr. AIR 1999 S.C. 478.

15. In Ranjit Thakur Vs. Union of India (UOI) and Others, the Appellant was found guilty in Court Martial proceedings and a punishment of dismissal from service and sentence of imprisonment was imposed upon the Appellant. The punishment imposed upon the Appellant was quashed on the ground that it was strikingly disproportionate. In Ranjit Thakur(11) case at page 2392 of the Reported decision Supreme Court observed:

The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise within the exclusive province of the Court-martial, if the decision of the Court''even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

Ranjit Thakur(Supra) case was followed in Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others,

16. In B.C. Chaturvedi v. Union of India AIR 1995 S C.W. 4374, in para.18 of the Reported decision, it was observed as follows:

The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusions on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal it would appropriately mould the relief, either by directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof.

17. The ratio decidendi of the. decision in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, is that the Court in the exercise of judicial review can intervene if the punishment impose is wholly disproportionate.

18. In Union of India v. G. Ganayutham (Supra), in para. 28 of the Reported decision, Supreme Court summarised the position of proportionality in administrative law in England and in India as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bone fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith, as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is

disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment is to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on *Wednesbury* and *CCSU* principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4) (b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

19. In *Union of India v. G. Ganayutham* (Supra) in para. 31 of the Reported decision it was observed as follows:

In such a situation, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him irrational according to *Wednesbury* or *CCSU* norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi's* case (AIR 1995 SCW 4374) that the Court might, -- to shorten litigation -- think of substituting its own view as to "the Quantum of punishment in the place of the punishment awarded by the competent authority.

20. Ratio decidendi of the above referred decisions is that the High Court, in exercise of its power of judicial review, can interfere with the punishment imposed upon an employee on the ground that the punishment imposed is disproportionate to the gravity of misconduct of punishment imposed is found to be (a) not suitable to the offence and the offender, (b) vindictive or unduly harsh, (c) disproportionate to the offence which shock the conscience, (d) amount of punishment in itself is conclusive evidence of bias, (e) outrageous defiance of logic, (f) irrational, (g) perverse and (h) absurd. Perverse in the sense that the punishment imposed is so unreasonable that no reasonable person with reasonable intelligence and rationality would have imposed such punishment. Unreasonable in the sense that punishment was imposed by not taking into account all the relevant facts and materials eschewing the irrelevant one. Absurd in the sense that no sensible person could ever dream that imposition of such penalty lay within the powers of the authority. Irrational in the sense that it is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided would have arrived at it.

21. It is useful to refer to the following observation of Lord Greene in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 K.B. 223 to find out what is meant by the term "reasonable way":

It is true the discretion must be exercised reasonably. Now what does that mean ? Lawyers familiar with the phraseology commonly used in relation to exerciser statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. If he does not obey those rules, he may truly be said, and often is said to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in *Shortly, Poole Corporation*, (1926) 1 Ch. 66 gave the example of the "red-haired teacher dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.

22. The matter relating to proportionality of punishment can be viewed from different angle also. In our service jurisprudence, broadly speaking, two typed of penalties can be imposed upon an employee namely, (a) minor penalty and (b) major penalty. Minor penalties can be imposed upon an employee for minor misconducts. Major penalties can be imposed upon the employee for major misconducts. Ordinarily, major penalties include stoppage of increments, reduction in rank, dismiss from service and discharge from service. Should the allegations of major misconduct are proved, the disciplinary authority has to decide which one of the major penalties should be imposed upon the delinquent employee. The disciplinary authority has to choose one of the major penalties for imposition. Such choosing falls within the area of discretion of the disciplinary authority. Law is now well settled,, "Law has reached its finest moments," stated Douglas, J. in *United States v. Wunderlich* (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1951) 342 US 98 , "mean sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fenciful." These views of Douglas, J. and Lord Mansfield have been approved by our Supreme Court in *Jaisinghani v. Union of India* It is now well settled that employee of a "state" within the meaning of Article 12 of the Constitution of India are entitled to enforce provisions contained in Part-III of Constitution of India against their employer. In other words, an employer who is a "state", within the meaning of Article 12 of the Constitution of India is bound to deal with his employees, even in the matter relating to departmental disciplinary proceeding, in accordance with the fundamental rights contained in

Part-III of Constitution of India. It is now well settled that principles of natural justice have come to be recognized as being a part of the guarantee contained in Article 14 of our Constitution. Similarly arbitrariness results in discrimination and is also violative of Article 14 of the Constitution of India. In this context reference may be made to *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, . In para. 95 of the reported decision in *Union of India and Another Vs. Tulsiram Patel and Others*, case it was held as follows:

The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

Thus when the employer who is a "State" within the meaning of Article 12 of the Constitution of India imposes a penalty not proportionate to the gravity of the misconduct then such imposition of penalty shall amount to arbitrary, fanciful and capricious action of the disciplinary authority violating Article 14 of the Constitution of India. In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, Supreme Court in para. 33 of the reported decision observed as follows:

The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21:

Therefore, if the employer who is a "State" within the meaning of Article 12 of the Constitution of India, while imposing punishment upon an employee chooses punishment of dismissal or discharge from service which is not proportionate to the gravity of the misconduct committed by the employee, acts arbitrarily, fancifully and capriciously in utter violation of Article 14 of the Constitution of India which in its result violates Article 21 of the Constitution of India. In such circumstances, High Court can certainly interfere with the punishment on the ground that punishment imposed is disproportionate to the gravity of the misconduct committed by the employee and thereby violates Arts. 14 and 21 of

the Constitution of India.

23. In *Sanchalakshri and Anr. v. Vijayakumar Raghuvirprasad Mehta and Anr.* AIR 1999 S.C.478, the penalty was imposed upon Respondent No. 1 on the ground that Respondent No. 1 made a statement which was false to his knowledge and that it was on the basis of the forged endorsements he wanted to get payment as per the revised pay scale regularised. Supreme Court held that the Respondent No. 1 had thus not only committed a serious misconduct but also a serious criminal offence and it under such circumstances the punishment of dismissal was imposed by the school management it cannot be said that it was strikingly disproportionate to the gravity of the misconduct. In the instant case also the writ Petitioner was charged with the allegation of forgery and misappropriation of Corporation's revenue. We are of the view that the allegations against the Petitioner are serious in nature and punishment of dismissal imposed by the Corporation management cannot be said to be strikingly disproportionate to the gravity of the misconduct.

24. In view of the discussions made hereinabove we dismiss the appeal preferred by the Corporation and we partly allow the appeal preferred by the Petitioner-Appellant to the extent D.C.I.L. mentioned hereinbelow. We hold that the Appellant-Petitioner is entitled, to full remuneration for the entire period he was placed under suspension. We direct the Corporation to pay the Petitioner his full remuneration for the entire period he was placed under suspension less the subsistence allowances already paid for the said period, within six weeks from the date of this judgment and order. However, there shall be no order as to costs.

Urgent xerox certified copies, if applied for by the parties, be supplied expeditiously.

Shyamal Kumar Sen, A.C.J.

25. I agree.