

(2016) 10 OHC CK 0011
In the Orissa High Court
Case No : W.P.(C) No.27509 of 2011

Branch Manager, Orissa Air Products Pvt. Ltd.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 226, Article 227
Industrial Disputes Act, 1947 — Section 11-A

Citation : (2017) 152 FLR 372 : (2017) LabLR 296

Hon'ble Judges : Kumari Sanju Panda And Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s B.P. Tripathy, D. Pradhan, G.S. Dass and P. Tripathy Advocates, for the Petitioner; M/s B. Satpathy, B. Baral, T. Lenka, B. Jena and R.C. Kar, Advocates, for the Opposite Party No. 2; Mr. S.N. Mishra, Additional Government Advocate, for the Opposite P

Final Decision : Allowed

Judgement

Shri Sujit Narayan Prasad, J. - The award dated 13.4.2011 passed by the Industrial Tribunal, Orissa, Bhubaneswar in Industrial Dispute Case No.124 of 2008 has been challenged by the Management-Branch Manager, Orissa AIR Products Ltd., Gundichapada, Dhenkanal, whereby and where under order of dismissal inflicted by way of punishment by the Management-petitioner against the workman has been substituted by the order of reinstatement in service with 50% of back wages from the date of discharge till the award becomes enforceable and imposed punishment of stoppage of two increments of the workman with cumulative effect.

2. Case of the workman in brief is that he was working as Plant Operator in the factory of the management, while he was performing " shift duty from 10 P.M. to 6 A.M. he felt acute pain in his left side scrotum for which he was taking rest but without being negligent towards his duty. While he was in rest, the Branch Manager of the factory made a visit and finding him taking rest the Branch

Manager thought that he was in deep sleep and for that suspended him from service w.e.f. 28.6.92, followed by charge sheet dated 28.7.92 to which he submitted explanation along with medical report and also begged apology for the alleged incident but the Management, without giving any head to that, has initiated regular domestic enquiry and the charge having been proved in the enquiry punishment of discharge from service has been imposed. The workman, being aggrieved, has raised dispute which ultimately culminated into the reference which has been answered in favour of the workman, which is under challenged by the Management in this writ petition.

3. Case of the management is that on 28.6.92 while the workman was in night duty in the factory premises the General Manager made a round inside the factory at about 4.15 A.M. and found that the workman was sleeping near his work place by arranging chairs, stool, etc. as a shift bed. At that time two Compressors, Nitrogen Blower, Heater, Water Pumps and other machines were running which needed to be watched constantly in order to avoid heavy damage to the machines. The workman, as the Plant Operator, was required to check the machines frequently and to record the pressure, temperature etc. in a log sheet, but he was found in deep sleep making entries in the log sheets in advance. The workman as well as the helper were found asleep. Accordingly, charge has been framed and thereafter the charge having been proved, the management has taken decision to discharge him from service since the management has lost confidence upon him.

4. Heard learned counsel for the parties and perused the documents available on record.

5. In the light of the factual aspects of the parties, Industrial Tribunal has proceeded to answer the following reference.

"Whether the discharge from services of Sri Narayan Chandra Rout, Operator by the management of Orissa Air Products Ltd., Dhenkanal with effect from 4.10.1992 is legal and/or justified If not, to what relief Sri Rout is entitled"

6. The Industrial Tribunal has formulated following three issues:

(1) Whether the discharge from services of Sri Narayan Chandra Rout, Operator by the Management of Orissa AIR Products Ltd., Dhenkanal with effect from 4.10.92 is legal and/or justified?

(2) If not, to what relief Sri Rout is entitled?

(3) Whether the domestic enquiry has been conducted fairly ?

7. While answering issue no.3 the Industrial Tribunal found that the finding of the domestic enquiry has reached to the conclusion that the domestic enquiry is fair. With respect to the issues nos. 1 and 2 the Industrial Tribunal has gone into the quantum of punishment and thereafter order of discharge has been substituted by another punishment i.e. stoppage of two increments of the workman with

cumulative effect, directed the Management to reinstate the workman in service with 50% of back wages from the date the award becomes enforceable. The Management being aggrieved with the said award is before this Court by way of the writ petition.

8. Ground taken by the Management that the Industrial Tribunal has exceeded its jurisdiction as because the moment the domestic enquiry has been held to be fair, the only course left open to the Industrial Tribunal is to approve the order of punishment, Industrial Tribunal cannot substitute its view from the decision already taken by the Management more particularly in the facts and circumstances of the case where Labour Court/Industrial Tribunal has come to conclusion that the nature of allegations levelled against the workman is serious, at the first instance the order of discharge has been quashed with direction to reinstate the workman in service by inflicting punishment of stoppage of two annual increments with cumulative effect.

9. We before examining the issues thought it proper to discuss the power of jurisdiction of the Industrial Tribunal under Section 11A of the Industrial Disputes Act, 1947 which confers power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. The Hon'ble Apex Court has discussed the scope of Section 11A of the Industrial Disputes Act in *Indian Iron and Steel Co. Ltd. v. Workmen*, reported in (1958) 1 LLJ 260(SC) and has been pleased to observe that while considering the tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, while doing so the tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the tribunal will interfere only when there is want of good faith, victimization, unfair labour practise, etc. on the part of the management. Thus the Industrial Tribunal is supposed to interfere with the order of dismissal only when there is want of good faith, victimization, unfair labour practise on the part of the management.

10. Power of judicial review with respect to the punishment imposed upon the delinquent it has been held in the judgment rendered by the Hon'ble Apex Court in the case of *Bharat Heavy Electricals Ltd. v. Chandrasekhar Reddy and others* reported in (2005) 2 SCC 481 their Lordships has held at paragraphs 19, 20, 21, 22, 23 and 24 by taking into consideration the case of loss of confidence which is being quoted herein below:

"19. The learned counsel for the appellant has rightly relied upon the decisions of this Court in support of her argument. In *Air India Corporation v. V.A. Rebellow*, (1972) 1 SCC 814, this Court held with reference to loss of confidence as follows :-

"Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge.

" 20. In *Francis Klein & Company Private Ltd.*, this Court held :-

"In our view 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.

Even this direction is not a valid direction because if once the Company has lost confidence in its employee, it is idle to ask them to employ such a person in another job. What job can there be in a Company which a person can be entrusted with and which does not entail reposing of confidence in that person."

21. In *Janatha Bazaar South Kanara Central Coop. Wholesale Stores Ltd. v. Secy., Sahakari Noukarana Sangha*, (2000)7 SCC 517 this Court held :-

"Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled.

In case of proved misappropriation, in our view, there is no question of considering past service record. It is the discretion of the employer to consider the same in appropriate cases, but the Industrial Tribunal cannot substitute the penalty imposed by the employer in such cases."

22. In *UP SRTC v. Mohan Lal Gupta*, (2000)9 SCC 521 this Court held :-

"The employee has been found to be guilty of misappropriation and in such an event, if the appellant-Corporation loses its confidence vis-a-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own in allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Industrial Tribunal cannot exercise its discretion and alter the punishment."

23. With reference to Section 11-A of the Act, in the case of *The Workmen of Firestone Tyre & Rubber Company Ltd.*, (1973) 1 SCC 813 this Court held :-

"Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation."

"If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give every cogent reasons for not accepting the view of the employer."

24. In *CMC Hospital Employees' Union & Anr. v. CMC Vellore Association*, (1987) 4 SCC 691 this Court held :-

" Section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the

management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision."

In the case of State Bank of Hyderabad and another v. P. Kata Rao reported in (2008) 15 SCC 657 wherein at paragraph-18 Hon"ble Apex Court has said that there cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the enquiry officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment. In the case of Nirmala J. Jhala v. State of Gujarat and another, reported in (2013)4 SCC 301 it has been held at paragraphs 25 and 26 which is being reproduced herein below:

"25. In Municipal Committee, Bahadurgarh v. Krishnan Bihari & Ors., AIR 1996 SC 1249, this Court held as under:

4.In a case of such nature ? indeed, in cases involving corruption ? there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.

26. In NEKRETC v. H. Amaresh, (2006) 6 SCC 187, this court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal. Similar view has been reiterated in U.P. SRTC v. Vinod Kumar, (2008)1 SCC 115 and U.P. SRTC v. Suresh Chand Sharma, (2010)6 SCC 555."

In the case of Deputy Commissioner, Kendriya Vidyalaya Sangthan and others v. J. Hussain, reported in (2013) 10 SCC 106 wherein their Lordships at paragraphs 14 and 16 has been pleased to observe as has been quoted herein below:

"14. Thus, in our view entering the school premises in working hours i.e. 10.30 a.m. in an inebriated condition and thereafter forcibly entering into the Principal"s room would constitute a serious misconduct. Penalty of removal for such a misconduct cannot be treated as disproportionate. It does not seem to be unreasonable and does not shock the conscience of the court. Though it does not appear to be excessive either, but even if it were to be so, merely because the Court feels that penalty should have been lighter than the one imposed, by itself is not a ground to interfere with the discretion of the disciplinary authorities. The penalty should not only be excessive but disproportionate as well, that too to the extent that it shocks the conscience of the court and the court is forced to find it as totally unreasonable and arbitrary thereby offending the provision of Article 14 of the Constitution. It is stated at the cost of the repletion that discretion lies with the disciplinary/appellate authority to impose a particular penalty keeping in view the nature and gravity of charge. Once it is found that the penalty is not shockingly disproportionate, merely because in the opinion of the Court lesser punishment could have been more justified, cannot be a reason to interfere with

the said penalty."

"16. In the present case, it cannot be imputed that the departmental authorities while imposing the punishment acted in a manner which manifests lack of reasonableness or fairness. In *Karnataka Bank Ltd. v. A.L. Mohan Rao*, (2006)1 SCC 63, charge against the delinquent employee was that he had colluded with one of the Branch Managers and enabled grant of fictitious loan. The High Court interfered with the punishment of dismissal and ordered reinstatement on sympathetic ground even when it found that the misconduct was proved. This Court reversed the judgment of the High Court. Repeatedly this Court has emphasised that the courts should not be guided by misplaced sympathy or continuity ground, as a factor in judicial review while examining the quantum of punishment.

In the case of *General Manager(Operations), State Bank of India and another v. R. Periyasamy*, reported in (2015) 3 SCC 101 wherein at paragraph-9 it has been said by Hon''ble Apex Court which is being quoted herein below:

"In *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*, (2011)4 SCC 584 , this Court observed as follows:-

"5. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide *B.C. Chaturvedi v. Union of India* : (1995) 6 SCC 749, *Union of India v. G. Ganayutham* : (1997) 7 SCC 463, *Bank of India v. Degala Suryanarayana* : (1999) 5 SCC 76 and *High Court of Judicature at Bombay v. Shashi Kant S Patil* (2000) 1 SCC 416).

It is not necessary to multiply authorities on this point. Suffice it to say that the law is well settled in this regard. "

11. After going through the provision of Section 11A of the Industrial Disputes Act, 1947 as well as the authoritative pronouncement while discussing scope of Section 11A of the Industrial Disputes Act, 1947 in the case of *Indian Iron and Steel Co. v. Workmen* (supra) and other pronouncements with respect to the jurisdiction of the Industrial Tribunal, Tribunal or the Court of law to interfere with punishment, it is settled that power of judicial review is very limited and it

can only be interfered if there is perversity in the finding or in case of violation of principle of natural justice. So far as the power of Labour Court is considered, it has been held by Hon"ble Apex Court that order of dismissal should not have been reversed by order of reinstatement since it is question of lack of confidence upon the employee by the employer and the fact that the employer does not want to get such employee whose integrity is found to be adverse, then order of dismissal can be reversed by the court of law if finding is perverse or charge has been found to be proved without following principle of natural justice.

12. So far as the fact of case of the Management and the workman is concerned, the following charges have been levelled against the workman.

(1) That, on the early morning of 28.6.92 around 4.05 AM when the undersigned entered the Oxygen Plant room, you were found sleeping. The undersigned called you by name twice but you did not get up. When he came nearer to you and made sound you woke up.

(2) That Sri L.N. Das was also on duty in the Oxygen Plant in "C" shift. Instead of attending his duties at cylinder charging rack and/or assisting you, he was also found sleeping. This indicates not only you slept but also you allowed your Khalasi to sleep during duty hours which is very serious.

(3) That, sleeping on duty ours that too when the Plant is running condition is a very serious misconduct and could have caused irreparable damages to the plant and machinery.

(4) That while going through the log sheet which was maintained by you at the time of its seizure at 4.10 AM it was found that you have already recorded in advance the reading of both the Compressors, column pressure, purity of gas, temperature etc. which were supposed to be seen at actual and recorded at 5.00 AM and 6.00 AM respectively. This amounts misrepresentation of facts, manipulation of record also negligence in performing your duties.

(5) That when the undersigned was proceeding towards Gate Office from Oxygen Plant after collecting/seizure of the log sheet, you requested him for handing over the log sheet to you. Although you were told to record the various plant data on a new log sheet paper, you did not care to do it. This amounts negligence of duty, disobedience of the order and insubordination too.

It transpires from the award that the Industrial Tribunal after having discussed the fact regarding fairness of domestic enquiry came to specific finding that the domestic enquiry is fair. Industrial Tribunal has further reached to the conclusion that the nature of allegation levelled against the workman is serious as per the Model Standing Orders for workmen as formulated under the Orissa Industrial Employment (Standing Orders) Rules, 1946, a workman may be dismissed if he is found to be guilty of misconduct. It further transpires that the Industrial Tribunal has taken order No.14(iii) which enumerates the acts and omissions those shall be treated as misconducts and one of them which is related to

negligence of a workman is habitual negligence or neglect of work. According to the Industrial Tribunal the Management has not charge-sheeted the workman on the allegation of habitual negligence or neglect of work, hence order of dismissal is highly disproportionate to charges levelled against him. Accordingly, reversing the order of dismissal the Industrial Tribunal awarded to reinstate the workman in service with 50% back wages and imposed punishment of stoppage of two annual increments with cumulative effect.

Learned counsel for the Management has relied upon the decision of the Hon^{ble} Apex Court in the case of Depot Manager, APSRTC v. B.Swamy, reported in 2007(3) SCJ 529 wherein at paragraph-8 it has been held: "

We fail to understand how the incident could be characterized as accidental. The mere fact that this was the first occasion when the respondent was caught, is no ground to hold that it was accidental. What weighed with the learned Judges was the fact that the respondent had not been found to be involved in such irregularities earlier. In our view that is not very material in the facts of this case. A conductor of a bus enjoys the faith reposed in him. He accepts the responsibility of honestly collecting fares from the passengers after issuing proper tickets and is obliged to account for the money so collected. If conductors were to be dishonest in the performance of their duties, it would cause serious pecuniary loss to the employer. The High Court was therefore, not justified in observing that the management gave "excess gravity" to the offence. We are constrained to observe that the High Court was not justified in characterizing the order of the management as one induced by exaggeration of the gravity of the offence. The conductor performs only the duty of issuing tickets to the passengers and accounting for the fare collected from the passengers to the management. If he is dishonest in the performance of his duties, he is guilty of serious misconduct and the gravity of the misconduct cannot be minimized by the fact that he was not earlier caught indulging in such dishonest conduct. There is no guarantee that he had not acted dishonestly in the past as well which went undetected. Even one act of dishonesty amounting to breach of faith may invite serious punishment.

In the case of Mangalam Timber Products Ltd. v. Sri Sailesh Kumar Gantayat, reported in 2009(121) FLR 1039, this Court has been pleased to hold at para-17 as follows:

"Coming to the question of quantum of punishment, the Supreme Court in the case of Divisional Controller KSRTC (NWKRTC) v. A.T.Mane, reported in (2004) III LLJ 1074 SC, held as under:

Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the Corporation's funds, there is

nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

13. There is no dispute about the fact that the disciplinary authority/management while inflicting punishment has imposed punishment as per the gravity of the offence and the gravity of the offence depends upon the nature of work which has been assigned upon the workman. There might be cases that the workman or the employee go on medical leave for a particular period but due to some compelling circumstances it may be a position that he could not be able to resume on duty after expiry of the leave period, rather he reported to duty after lapse of one or two day and if such type of charge is there against an employee or the workman which is for the first time the principle of inflicting punishment on the basis of the habitual negligence can be considered but where nature of work assigned to the workman is such a serious that due to his negligence some causality may occur or production in the factory can disrupt, even for one negligence if the disciplinary authority thinks that appropriate punishment is not to retain such employee in service, there cannot be any interference by a court of law, so merely on the ground that there is no habitual negligence the order of discharge cannot be passed, it does not seems to be proper rather it depends upon the nature of work assigned to the workman.

Here in the instant case, nature of charge as has been reflected by us herein above, allegation is that on 28.6.92 around 4.05 AM the workman was found sleeping even in spite of giving call repeatedly the workman did not get up and only when the officer came nearer to him and made sound he woke up, not only that while he was on duty in the Oxygen plant, instead of attending duties at Cylinder charging rack and/or assisting he was also found sleeping which indicates that not only the workman has slept but also he allowed Khalasi to sleep in the duty hours that too when the plant was in running condition and the work was assigned with duty to check constantly running machine in order to avoid heavy damage to the machines for which he was required to check and record in the log sheet but the workman was found during that course sleeping and had already recorded reading of compressors, column pressure, purity of gas, temperate in advance and as such the nature of allegation is serious. If in the plant the workman or the employee has been assigned with duty, he was to discharge his duty, sleeping in that course cannot be taken lightly since any mishappening can happens, taking into consideration these aspects of the matter the Management has reached to conclusion not to retain the workman in service since they have lost confidence upon it.

14. Industrial Tribunal can interfere in the decision of the Manage if the enquiry is without any procedure or there is violation of principles of natural justice or the impugned order of discharge is by way of interference of the Industrial Tribunal but no such case has been made out by the workman as would be evident from the materials available on record rather the workman has tendered apology not to repeat again.

15. We, after taking into consideration all these aspects of the matter and placing reliance upon the judgment referred to above, found that the Industrial Tribunal has not decided the issue in right prospective. We, sitting under Article 226 of the Constitution of India by not assuming the power of appellate court, since scope of High Court 226 is limited, reference in this regard needs to be made of the judgment rendered by Hon''ble Apex Court in the case of Syed Yakoob v. K. S. Radhakrishnan and others, AIR 1964 SC 477 wherein it paragraph 7 their Lordships have been pleaded to hold as follows:-

"7.The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was" insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

The proposition laid down by the Hon''ble Apex Court in the case of Syed Yakoob (supra) still holds good since the same has been considered by Hon''ble Apex Court recently in the case of M/s. Pepsico India Holding Pvt. Ltd. v. Krishna Kant Pandey, (2015) 4 SCC 270 wherein their Lordships while discussing the scope of

Article 226 of the Constitution of India in the matter of showing interference with the finding of the Tribunal has been pleased to hold after placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447 as follows:

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of his Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and re appreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at p. 1301 of the report as follows: (SCC p. 864, para 7)

"The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath that the ... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose v. Commr. of Hills Division and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

16. In such cases High Court can interfere with the finding if it is found that the award is perverse or there is error on the face of the record and according to us the award having been passed by the Industrial Tribunal (impugned) is perverse in view of the discussions made by us above and as such in exercise of powers conferred under Articles 226 and 227 of the Constitution of India found that the award is not perfect. In the result, the award is set aside.

The writ petition stands allowed.

17. Before parting with the judgment since the award has been stayed by this

Court on 31.10.2011 and while passing interim order of stay this Court has directed to comply with the provision of Section 17-B of the Industrial Disputes Act and we thought it proper to direct the Management to disburse the arrear dues, which the workman is entitled to under section 17-B of the Industrial Act in pursuance to the order dated 31.10.2011 within four weeks from the date of receipt of copy of this order, if not already disbursed.