
(2014) 02 AP CK 0135

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16165 of 2008

Ch. K. Durga Rao

APPELLANT

Vs

Delta Paper Mills Limited

RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25T

Citation : (2014) 4 ALD 246 : (2014) 3 ALT 401 : (2014) LabIC 3090 : (2014) 2 LLJ 227 : (2014) 2 LLN 386

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : J. Parthasaradhi, for the Appellant; Vedula Srinivas, for the Respondent

Judgement

Dama Seshadri Naidu, J.—The petitioner filed the present writ petition questioning the award dated 28.03.2007 of the Labour Court in I.D. No. 58 of 2002, which modified the punishment of summary dismissal, meted out by the respondent Company (Delta Paper Mills Limited) through its order dated 23.10.2001, to that of compulsory retirement. The facts in brief are that the petitioner joined the respondent Mills ("the Company", for brevity) in 1982 as packer and later got promoted as finisher. After putting in nearly two decades of service, on 23.10.2001, the respondent Company charge sheeted the petitioner alleging that he had stolen the Company letter-heads and prepared fake salary certificate by forging the signature of the Deputy Manager (Personnel) to enable some persons of the Company to obtain house loans, thereby securing pecuniary benefit of Rs. 5,000/- in the form of bribe. Based on the said charges, when the respondent Company issued a show cause notice on 30.08.2001, the petitioner submitted his explanation on 01.09.2001. Not satisfied with the explanation submitted by the petitioner, the respondent Company proceeded with the departmental enquiry and eventually imposed the capital punishment of dismissal from service on the petitioner through order dated 23.10.2001.

Aggrieved thereby, the petitioner carried the matter before the Labour Court by raising an industrial dispute in I.D. No. 58 of 2002. In course of time, through award dated 28.03.2007, the Labour Court modified the order of dismissal to that of compulsory retirement with effect from the date of dismissal of the petitioner i.e., from 23.10.2010. Having not been satisfied with the modified award passed by the Labour Court, the petitioner filed the present writ petition.

2. Sri M. Pitchaiah, learned counsel for the petitioner, in the above factual backdrop, has contended that the charges levelled against the petitioner are baseless and have been cooked up by the respondent Company on the ill advice of certain employees who were inimically disposed of towards the petitioner. Certain authorities of the respondent Company even threatened the petitioner of dire consequences if he had to take any steps to defend his case. Succumbing to the threats, the petitioner did not take any legal assistance during the departmental enquiry. Having denied all the charges as utterly baseless, the learned counsel has contended that the petitioner being illiterate could not be accused of forging the signature of the Deputy Manager (Personnel).

3. The learned counsel has contended that during the course of enquiry, the petitioner was not given proper opportunity to defend himself and it resulted in gross violation of the principles of natural justice. The learned counsel has also made a grievance on the count that the explanation submitted and the material produced by the petitioner during the course of enquiry were not considered properly and the whole enquiry was a mere ritual. Elaborating on the principle of proportionality, the learned counsel has submitted that even for the sake of arguments, if the charges were held to have been proved, the punishment of dismissal from service is shockingly disproportionate to the gravity of the alleged charges. It is the specific contention of the learned counsel that the disciplinary authority and subsequently the Labour Court ought to have taken into consideration the unblemished long service of the petitioner for about two decades before handing out the harshest punishment of dismissal from service.

4. It is also the contention of the learned counsel for the petitioner that the whole enquiry was initiated on an anonymous complaint or on a false representation made by certain unknown persons. Based on such an innuendo, there could not have been any enquiry at all, in the first place. Grave as it sounds, the learned counsel has also contended that, before the initiation of the enquiry, the officials of the respondent Company obtained the signatures of the petitioner on blank papers on an excuse that he would be given back his job and the enquiry would be a mere formality. It is asserted that later the management used those signed blank papers against the petitioner.

5. The learned counsel, referring to the impugned award, has stated that the Labour Court has categorically held that the first charge was not proved. Even with regard to the second charge, it was held that the allegation of forging the signature of the Deputy Manager (Personnel) had not been proved. Even with regard to the third charge, a finding was rendered by the Labour Court that the

money alleged to have been collected by the petitioner was not used for his own benefit, but was distributed by the petitioner to others for arranging the loans to his fellow-workman who willingly paid the money to him for the said purpose. Thus, having held that such an arrangement of distribution of money cannot be called bribe, the Labour Court, instead of setting aside the punishment awarded by the Company in its entirety, in the name of modified punishment, compelled the petitioner to retire, calling it a voluntary retirement.

6. According to the learned counsel for the petitioner, no financial loss was caused to the respondent Company and the same was taken note of by the Labour Court, when it has observed that the petitioner had no intention of cheating the respondent Company, much less causing any monetary loss to it. It is the grievance of the petitioner, as has been contended by the learned counsel, that despite such clean chit having been given, for un-fathomable reasons, the Labour Court inflicted a modified punishment of voluntary retirement, which is as onerous as, if not more than, the punishment of removal or dismissal from service.

7. The learned counsel for the petitioner has strenuously contended that the punishment of either compulsory retirement or voluntary retirement is not an enumerated punishment under Schedule V of the Industrial Disputes Act, 1947, or under the Certified Standing Orders, and, as such, the punishment imposed by the Labour Court is beyond its jurisdiction. In support of the said contention, the learned counsel has placed reliance on *Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another*,

8. On other aspects of the matter, the learned counsel has placed reliance on the following judgments:

- 1) *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*,
- 2) *L. Michael and Another Vs. Johnson Pumps Ltd.*,
- 3) *South Central Railway Employees' Co-operative Credit Society Vs. Labour Court and Others*,
- 4) *Management, Royal Laboratories, Hyderabad Vs. Labour Court and Another*,
- 5) *Sadhan Sahakari Samiti Basantpur Ltd. Vs. Presiding Officer, Labour Court and Another*,
- 6) *The Management of Panitole Tea Estate Vs. The Workmen*,
- 7) *Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others*,
- 8) *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*,
- 9) *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*,

9. Referring to the averments made in the counter affidavit filed by the respondent Company, the learned counsel for the petitioner has contended that if it is a case of loss of confidence of the management on the petitioner, the other four employees who are alleged to have obtained the services of the petitioner for the purpose of securing house loans in an illegal manner, ought not to have been let off without any punishment. Thus, there is any amount of discrimination in the treatment of similarly placed workmen. He has contended that it is the change of the management that hastened the things and made the petitioner a scapegoat in the scheme of things of the new management.

10. Referring to Section 25T of the Industrial Disputes Act, the learned counsel has also contended that the respondent Company has resorted to unfair labour practice to see that the petitioner is sent out under the excuse of misconduct.

11. The learned counsel has assailed the findings of the Labour Court on the ground of perversity. He has contended that the Labour Court has chosen a strange method of calibrating the misconduct holding that the 2nd charge was proved to an extent of 50% and the 3rd charge, to an extent of 75%, for which there was no material at all. According to the learned counsel the discussion in the Award clearly establishes it is the employee of Mavulamma Housing Cooperative Society, who ought to have been punished, instead of the petitioner. Having observed thus, it is contended by the learned counsel for the petitioner, the Labour Court has contradicted itself by holding that the charges were proved in a statistical manner of 50% and 75%.

12. The learned counsel has further submitted that the findings of the Labour Court are beyond its province and competence. In support of the said submission, the learned counsel has placed reliance on Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others,

13. The learned counsel, going back to the order of the disciplinary authority, has contended that the said order of dismissal has not contained any reasons and that narration of sequence of events does not amount to giving reasons. In this regard, he has placed reliance on A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.,

14. Per contra, Sri Vedula Srinivas, the learned counsel appearing for the respondent Company, having opposed the claims and contentions of the petitioner, has straightaway drawn the attention of this Court to certain observations in the impugned award. The learned counsel has pointed out that during the course of enquiry, soon after the examination of one witness on the side of the management, the petitioner submitted a letter admitting that he had obtained the letter-heads of the Company from the office boy as per the advice of one Sri Ranga Rao, who actually took loan previously from the Co-operative Housing Society. Elaborating further, the learned counsel has stated that the petitioner himself narrated in his letter in what manner he has perpetrated the crime or misconduct. Having obtained all the material required for forging the

signatures of the official concerned on the letter-heads he had obtained fraudulently, he along with his accomplices approached one Sri Ramakrishna, an employee of Mavulamma Housing Cooperative Society, Bheemavaram. Referring to the observation of the Labour Court that it is Sri Ramakrishna who forged the signature and that he alone should be held guilty, the learned counsel has stated that the said Sri Ramakrishna who is an outsider has only acceded to the request of the petitioner. As such, the petitioner cannot be entirely absolved of his crime or mischief.

15. The learned counsel has contended that, apart from numerous derelictions of the duty on the part of the petitioner, he has committed the misconduct of stealing letter-heads of Company for fabricating fake wage certificates for himself and for providing such certificates for others mentioned in the charge sheet for obtaining house loans. When it came to the notice of the management, based on the information provided by the officials of the A.P. Cooperative Housing Societies Federation Limited, Hyderabad, the management took up the matter and investigated further. In that process, the role played by the petitioner has come to light. The learned counsel has also further contended that as the misconduct committed by the petitioner is very grave, his actions have brought down the reputation of the Company in the eye of the public and other authorities. As such, the respondent management could not repose any confidence on the petitioner any further. In the light of losing of confidence, the management is well within its powers to terminate the petitioner's services and accordingly it passed orders of termination, after following due process and in accordance with standing orders governing its employees.

16. The learned counsel has also pointed out that the management witnesses 2 to 4 are the petitioner's co-workmen and that they have admitted their obtaining loans with the help and assistance of the petitioner. The learned counsel summing up his submissions, has stated that the management has brought on record unimpeachable material showing the misconduct of the petitioner in clear terms. He has also further submitted that the dismissal from service is on account of loosing of confidence and it cannot be found fault with. In this regard, the learned counsel has placed reliance on The Divisional Controller, KSRTC Vs. M.G. Vittal Rao,

17. According to the learned counsel, the Labour Court has already taken a very lenient view by directing the respondent management to treat the petitioner as having voluntary retired from service with effect from the date of dismissal i.e., 23.10.2001. Only with a view to putting the quietus to the issue, though the management had been aggrieved by the award of the Labour Court, he did not pursue the matter further and implemented the award. Thus, the learned counsel has urged this Court to dismiss the writ petition as it is devoid of merit.

18. Heard the learned respective counsels for the petitioner and respondent Company, apart from perusing the record.

19. To appreciate the issue in the correct perspective, it is necessary to examine the charges that have been framed against the petitioner:

- i) He has stolen Company Letter Heads and prepared fake salary certificates.
- ii) He has forged the signature of Dy. Manager (Personnel) for some persons for getting Housing Loan to them.
- iii) He has taken Rs. 5,000/- each as bribe from some persons for getting Housing Loan to them.

20. Having found the explanation issued by the petitioner to the charge memo, the respondent management conducted a departmental enquiry and decided to impose the major punishment of dismissal from service with immediate effect through its order dated 23.10.2001.

21. There is force in the contention of the learned counsel for the respondent Company that the Labour Court has indeed been lenient towards the petitioner. Illustratively, it can be stated that the Labour Court has held that the first charge was not proved. The reasoning applied for the said conclusion is as follows:

The first charge is that he [the petitioner] stolen the Company Letter Heads. But none of the witnesses examined on behalf of the management stating that the petitioner stolen the Company Letter Heads.

On the other hand, the office boy one A. Satyanarayana was examined on behalf of the Company. It is the evidence of A. Satyanarayana that he stolen the Company Letter Heads and gave them to the petitioner. Therefore, the charge against the petitioner that he stolen the Company Letter Heads is incorrect.

22. What cannot be lost sight of is that during the course of domestic enquiry, the petitioner himself submitted a letter of admission, ostensibly with a view to getting away with lesser punishment, stating that he effected the stealing of the letter heads through the office boy, since the said office boy had ready access to the documents. Accordingly, it cannot be stated that the petitioner had no role in stealing the letter heads. The office boy was only an instrument, and all that the office boy did was acting to the dictate of the petitioner and handing over the letter heads to the petitioner. Be that as it may, since the respondent management has not laid any challenge against the award, any further scrutiny of the award as to its infirmity from the point of view of the management is not called for. Even with regard to the other two charges, the Labour Court has taken a statistical approach and has stated that one charge was proved to the extent of 50% and another to the extent of 75%.

23. The management has taken a plea that it is a matter of loss of confidence and that such an eventuality gives ample powers to the management of dispense to the service of the delinquent. In any event, the Labour Court in its wisdom and discretion has decided to mollify the impact of the summary dismissal by modifying the award to the effect that the termination of the petitioner's

services should be treated as an instance of compulsory retirement, so that the petitioner would not be deprived of the benefit that had accrued to him by that point of time.

24. Since the learned counsel for the petitioner has raised many issues, it is appropriate to consider them in the light of the judicial pronouncements he has placed reliance on.

In *Rasiklal* (1 *supra*), the Supreme Court has held:

4. The High Court while dismissing the petition held that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfalls he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well-settled canon of penal jurisprudence--removal or dismissal from service on account of the misconduct constitutes penalty in law--that the workman sought to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct.

25. In the said case, after he was removed from service in one particular government department, the employee applied for a job in Ahmedabad Municipal Corporation. In the application form he was required to state whether he had been removed from service and if so, reasons for removal. If it is a case of voluntary leaving of the previous service, reasons for leaving the said service should be stated. While answering this column, the said employee stated that he had resigned from service due to transfer. Under those circumstances, the alleged suppression of the material fact being an unenumerated misconduct, their Lordships have held that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts. Even, *Glaxo Laboratories (P) Ltd.* (11 *supra*) also affirms the above legal proposition.

26. In *Capt. M. Paul Anthony* (2 *supra*), the Supreme Court has dealt with the issue of non-payment of subsistence allowance and the consequences thereof, by holding that when the said allowance is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of

non-payment of subsistence allowance, would gradually starve himself to death.

27. In the said case, it is further observed by their Lordships that since the delinquent was not provided any subsistence allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex parte proceedings against him, the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. The delinquent was said to have not undertaken the journey to attend the departmental enquiry owing to his penurious conditions, occasioned by non-payment of subsistence allowance. In the present case, the facts do not reveal any such conditions presenting themselves to vitiate the entire departmental enquiry.

28. In *L. Michael* (3 supra), a permanent employee of proven efficiency, with six years' standing, was simpliciter discharged with one month's pay. The delinquent challenged the order as being wrongful, mala fide and illegal, apart from an instance of colourable exercise of power. The management claimed loss of confidence because of alleged smuggling out secret information of the Company. Under those fact circumstances, the Supreme Court has held:

19. The law is simply this: The Tribunal has the power and, indeed, the duty to X-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new armour for the management; otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court, can be subverted by this neo-formula. Loss of confidence in the law will be the consequence of the Loss of Confidence doctrine.

29. In fact, in the very subsequent paragraph, their Lordships have answered the issue, thus demystifying the principle of "loss of confidence", by stating that:

20. In the light of what we have indicated, it is clear that loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The Court is concerned with the latter and not with the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or responsible post being misused or a sensitive or strategic position being abused, it may be a high risk to keep the employee, once suspicion has started and a disciplinary enquiry cannot be forced on the master. There, a termination simpliciter may be bona fide, not colourable, and loss of confidence may be evidentiary of good faith of the employer.

(emphasis added)

30. In South Central Railway Employees Co-operative Credit Society (4 supra), this Court, per a learned Single Judge, has dealt with the aspect of "loss of confidence" in an employee by the management. The facts of the case are that on one occasion the delinquent has failed to deliver the cheques to the persons intended and on another he is said to have delivered the cheques to wrong persons. The delinquent employee's case is that he brought back the cheques on those dates and returned the same in the office, as he could not find the persons, on whom they were intended to be delivered. There is also evidence on record to show that the employee's 12 years of service was unblemished.

31. Under those fact circumstances, in para 9 of the judgment, it is observed:

9. On a conspectus of the case law cited above, the following principles could be said to emerge: (1) In order to arrive at a conclusion whether the employer has lost confidence in the employee, there cannot be any strait-jacket principles as each case has to be assessed on its peculiar facts and circumstances; (2) The derelict observance of any act by the employee giving rise to the complaint of losing confidence in him must be a deliberate one. An innocuous and inadvertent act which causes detriment will not be a circumstance for losing confidence in the employee; (3) The normal rule is that in cases of invalid orders of dismissed employee and the exception is expedience, where, say, the employee held a position of confidence and trust and the employer lost confidence, reinstatement will not be fair.

(emphasis added)

32. In the case on hand, it cannot be said that misconduct attributed to the petitioner is not an innocuous and inadvertent act.

33. In A.L. Kalra (12 supra), the appellant was removed from service on the ground of misconduct. The appellant had taken house building advance from the employer but did not purchase a plot of land within two months as required under the rules, nor did he refund the amount despite reminders. His salary was withheld and penal interest was levied for the recovery of the advance. He then took another advance to purchase a motorcycle but he did not purchase it within a month as required by the rules. He did however purchase a scooter and submitted the necessary documents which were accepted. These defaults by the appellant were considered by the respondent Corporation as misconduct and it ordered an Inquiry against him after receiving his explanation. The Inquiry officer found guilty of the alleged misconduct on the charges of taking advance, not utilising the same for the purpose for which it was taken and not refunding the amount despite reminders. The report of Inquiry officer was, however, in just two paragraphs and it did not indicate by what process he reaches conclusion on what evidence appeal to him. No reasons were given by the enquiry officer to support his conclusion. The finding was an ipse dixit of the Inquiry officer. On the basis of the Inquiry report, the applicant was removed from service on the ground that the appellant's conduct was unbecoming of the status of an officer

like him.

34. Under those circumstances, the charge levelled against him was that the appellant by his above act "exhibited lack of integrity and conduct unbecoming of a public servant and violated Rule 4(1) and (iii) and Rule 5(5) of the PEC Employees" (Conduct, Discipline and Appeal) Rules and Rule 10(1)(c)(i) of PEC House Building Advance (Grant and Recovery) Rules and thereby committed misconduct punishable under the PEC Employees" (Conduct, Discipline and Appeal) Rules, 1975." Rule 4(1)(i) and (iii) mandate that every employee shall at all times (i) maintain absolute integrity; and (iii) do nothing which is unbecoming of a public servant. Rule 5 prescribes various misconducts for which action can be taken against an employee governed by the Rules. Under those circumstances the Supreme Court has held as follows:

22. Rule 4 bears the heading "General". Rule 5 bears the heading "Misconduct". The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct.

Having stated thus, their Lordships have further held:

22...It is not necessary to dilate on this point in view of a recent decision of this Court in A.S. Parmar and Others Vs. State of Haryana and Others, where this Court held that "everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty". Rule 4 styled as "General" specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are

accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct.

35. Indeed, after A.L. Kalra (12 supra), much the judicial water has flowed. In "Law Relating to Public Service¹", a treatise of enormous erudition, the noted legal commentator, Samaraditya Pal, it is stated that the scheme of the disciplinary rules in general is to identify the conduct which is made punishable and then to provide for the various punishments which may be imposed for the acts which are inconsistent with such conduct. The conduct rules and the rules for punishment may be provided in separate rules or combined into one. Moreover, there are a host of departmental instructions which elucidate, amplify and provide guidelines regarding the conduct of the employees. It is necessary to record reasons as to why the facts found amount to misconduct. It is further opined that the range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. The scheme of the Conduct Rules, almost invariably, is to first of all enunciate a general rule of conduct and behaviour followed by specific prohibitions and restrictions.

36. The learned author would further say that the question as to whether in the absence of a misconduct being specified, disciplinary proceedings could be initiated on an unenumerated misconduct, nevertheless, continues to be judicially debated.

37. In Probodh Kumar Bhowmick Vs. University of Calcutta and Others, the Calcutta High Court has held:

13. in absence of any provision of statute, an employer, in my opinion, has an inherent right to initiate a disciplinary proceeding as against its employees. It is beyond any body's comprehension that although an employee might have committed a serious misconduct like defalcation, theft, misbehavior with a lady or similar other matter, he cannot be punished. Recently this Court has come across a case when a Reader of the University has been punished for sexually exploiting a lady research student. Misconduct is a generic term of which the instances of misconduct as may be specified by the employer are their species. Misconduct in its generic sense has been defined by various High Courts and Supreme Court from time to time as would appear from the discussions made hereinafter.

14. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or

commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour; intentional wrong doing on deliberate violation of a rule of standard or behaviour:

Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. It differs from carelessness. Misconduct even if it is an offence under the Indian Penal Code is equally a misconduct.

15. Even in Industrial laws, acts of misconduct specified in standing order framed under Industrial Employment (Standing Order) Act, 1946 is not treated to be exhaustive. Various misconducts specified in Clause 14(3) of Model Standing Order are merely illustrative.

(emphasis added)

38. In the above judgment, S.B. Sinha J (as his Lordship then was), distinguishing both A.L. Kalra (12 supra) and Glaxo (11 supra), has held that it is not and cannot be said to be a precedent on the point that the employer in no circumstances can proceed against its employee in absence of rule defining and/or specifying misconduct.

39. Even the Hon"ble Supreme Court in B.C. Chaturvedi Vs. Union of India and others, has distinguished and limited the impact of the ratio laid down in A.L. Kalra (12 supra) in the following words:

10. The ratio in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., (L & S) 497] has no application to the facts in this case. Therein, the misconduct alleged was failure of the appellant to refund the advance taken from the Corporation. His omission was charged to be a misconduct. The question therein was that when Rule 5 of the PEC Employees (Conduct, Discipline and Appeal) Rules, 1975, defined "specific misconduct", whether in the general norm of behaviour, the omission to return advance amount, which was not specifically defined, would constitute a misconduct. This Court held that in the grey area it is not amenable to disciplinary action unless the act is constituted to be a misconduct under Rule 5 of the said Rules. We, therefore, hold that a public servant in possession of assets disproportionate to his known sources of income, which he has not satisfactorily accounted for, commits a misconduct amenable to disciplinary action under the CCS (CCA) Rules and the Conduct Rules.

40. In Royal Laboratories (5 supra), a Division Bench of this Court has held that management cannot be said to reasonably lose confidence in an employee merely because employee has exercised his lawful right, and that loss of confidence cannot be merely subjective based upon management's state of mind, and that objective facts must also be proved. In the said case the Division Bench has held that the employee was guilty of no more than making claims against the Management regarding his service conditions.

41. In the present case, the charges are to the effect that the petitioner has

stolen Company Letter Heads and prepared fake salary certificates; he has forged the signature of the Dy. Manager (Personnel) for some persons for getting Housing Loan to them; and he has taken Rs. 5,000/- each as bribe from some persons for getting Housing Loan to them. As such, it cannot be stated the charges were held proved on account of the petitioner's failure to keep up high standard of moral, ethical or decorous behaviour befitting an officer of the company.

42. In *Sadhan Sahkari Samiti* case (6 supra), the charged employee was working as a Salesman of the petitioner company since September 17, 1978. His services were dispensed with effect from June 1, 1982, on the basis of the charge of alleged corruption and financial irregularities. It is not disputed that before termination of his services, he was neither served with any charge-sheet nor was he paid any retrenchment compensation. It is also not in dispute that no inquiry preceded the termination. In this backdrop it was held that the termination of the services of the charged employee was illegal and improper.

43. In *Panitole Tea Estate* case (7 supra), the issue that has fallen for consideration is whether, once a termination is held to be unjustified, whether the workman can be paid compensation instead of reinstatement. On facts, the Labour Court by its award held that the contents of a vital document were too vague to connect the charged workman with the offence charged. According to the Labour Court the management had procured that exhibit only to harass the workman for no fault of his. The domestic enquiry was also found to be violative of the principle of natural justice and its conclusions perverse, there being no evidence to support them. That is how the said case has come to be decided.

44. In *Hindustan Tin Works* (9 supra) the question in controversy is whether even where reinstatement is found to be an appropriate relief, what should be the guiding considerations for awarding full or partial back wages. To the same effect is *Surendra Kumar Verma* (10 supra). Here the Labour Court has not found the reinstatement to be an appropriate relief. On the other hand, the Labour Court has held the punishment is disproportionate under the circumstances of the case. "However, the respondent is not ready to accept this employee having lost confidence in him. Therefore, it is a fit case to treat the petitioner as voluntarily retired from the service from the date of the dismissal."

45. In *Kanhaiyalal Agrawal* (8 supra), on which heavy reliance has been placed by the learned counsel for the petitioner, the facts are that the charged employee was working on the post of Weighment Clerk. He had contravened the prescribed procedure and in collusion with other colleagues signed payment slip wrongly prepared with a wrong date. Though on the said day of incident the farmer did not bring sugarcane to the mill. The responsibility of applicant is that he should sign on payment slip with correct date and the amount of sugarcane of farmer concerned, while he should do its weighing. As a Weighment Clerk his work was of faith and full responsibility. Under the said fact situation, their Lordships have held:

9. Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on the ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.

46. In fact, the Industrial Court (the appellate forum) held that the employees had not committed any misappropriation of money but were negligent in performing their duties. It, therefore, directed reinstatement of the workmen in the office in each of the cases, however, without back wages. Against the said decision both the workmen and the management filed writ petitions before the High Court. The learned Single Judge did not interfere with the order made by the Industrial Court in any one of the matters after noticing that the conclusion reached by the Industrial Court on examination of the case on the question of loss of confidence that it was not such a case and for the negligence committed by the workmen in question, held that the punishment of denial of back wages would meet the ends of justice and, therefore, upheld the order made by the Industrial Court. As such, the Division Bench (Two-Judge Bench) of the Hon'ble Supreme Court has eventually held:

11. It cannot be stated that the conclusions emanating from the orders of the Industrial Court are one of non-application of mind to the facts or ignoring any of the relevant facts or taking into consideration any of the facts not available on record, much less can the conclusions be characterised as perverse. We think, the writ jurisdiction has been appropriately exercised by the learned Single Judge. Hence, we decline to interfere with the order by the learned Single Judge.

47. It is interest to note that on the same aspect of loss of confidence, the learned counsel for the respondent, placed reliance on M.G. Vittal Rao (13 supra), which surveyed the entire case law on the said aspect, including Kanhaiyalal Agrawal (8 supra). Since the judicial disposition is quite revealing, it is profitable to extract a part of the judgment which deals with loss of confidence:

Loss of confidence

25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and

confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. [Vide Air-India Corporation, Bombay Vs. V.A. Rebellow and Another, Francis Klein and Co. (P) Ltd. Vs. Their Workmen and Another, and Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others, .

26. In Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others, this Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (SCC p. 614, para 9) (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved. (See also Sudhir Vishnu Panvalkar Vs. Bank of India,

27. In State Bank of India and Another Vs. Bela Bagchi and Others, this Court repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence. While deciding the said case, reliance has been placed upon its earlier judgment in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik,

28. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two. [Vide Binny Ltd. Vs. Their Workmen,], The Binny Limited Vs. Their Workmen,], Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others, , Chandu Lal Vs. Management of Pan American World Airways Inc., Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, and Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi,

29. In Indian Airlines Ltd. Vs. Prabha D. Kanan, , while dealing with the similar issue this Court held that: (SCC p. 90, para 56)

56. ...loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved.

30. In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee. (Vide Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad,

31. The instant case requires to be examined in the light of the aforesaid settled legal proposition and keeping in view that judicial review is concerned primarily

with the decision-making process and not the decision itself. More so, it is a settled legal proposition that in a case of misconduct of grave nature like corruption or theft, no punishment other than the dismissal may be appropriate. (Vide Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan,] and U.P. State Road Transport Corporation Vs. Suresh Chand Sharma,

32. The domestic enquiry found the delinquent employee guilty of all the charges. The enquiry report was accepted by the disciplinary authority and there is no grievance on behalf of the respondent workman that statutory provisions/principles of natural justice have not been observed while conducting the enquiry. The disciplinary authority imposed the punishment of dismissal from service which cannot be held to be disproportionate or non-commensurate to the delinquency. The Labour Court after reconsidering the whole case came to the conclusion that the enquiry has been conducted strictly in accordance with law in a fair manner and charges have rightly been proved against the delinquent employee. However, considering the difference in the standard of proof required in domestic enquiry vis-?-vis that applicable to a criminal case, the Labour Court repelled the argument of the respondent workman that once he stood acquitted he was entitled to all reliefs including reinstatement and back wages. The learned Single Judge as well as the Division Bench had simply decided the case taking into consideration the acquittal of the delinquent employee and nothing else.

(emphasis original)

48. In V Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, , the Supreme Court has held with a telling effect:

21. In our view, the theft committed by the respondent amounts to misconduct and, therefore, we have no hesitation to set aside the orders passed by the learned Single Judge and also of the Division Bench and restore the order of removal of the respondent from service. When the Labour Court has proved the charges, no interference by the learned Single Judge or by the Division Bench of the High Court was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised judiciously and fairly. In our opinion, the conclusion arrived at by the High Court in ordering reinstatement, continuity of service was shockingly disproportionate to the nature of charges already proved which is in the nature of theft.

22. It is also not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under

Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

23. Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment.

(emphasis added)

49. In the present instance, the charges, to be stated at the cost of repetition, are to the effect that the petitioner has stolen Company Letter Heads and prepared fake salary certificates; he has forged the signature of the Dy. Manager (Personnel) for some persons for getting Housing Loan to them; and he has taken Rs. 5,000/- each as bribe from some persons for getting Housing Loan to them. Those charges have been held to have been substantially proved. Under those circumstances, in the light of the ratio laid down in M.G. Vittal Rao (13 supra) and Raghuda Siva Sankar Prasad (17 supra), I do not find any reasons to interfere with the Award, dt. 28-03-2007 passed by the Labour Court, Guntur.

50. For the foregoing reasons, the above writ petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed. As a postscript, it may have to be added that since the Labour Court directed the respondent Company to treat the petitioner as voluntarily retired from service with effect from the date of his dismissal on 23.10.2001, the respondent Company shall pay all the terminal benefits due to the petitioner, if already not paid, as expeditiously as possible, at any rate not beyond two months.