

(2019) 11 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 13454 Of 2019

Dhanraj

APPELLANT

Vs

Divisional Controller Maharashtra State Road Transport
Corporation Limited And Anr

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 3(16), 5, 7, 16(3), 26, 27, 28, 28(1), 30, 30(2), 33, 44, 48, 53
Industrial Disputes Act, 1947 — Section 10, 11A

Citation : (2019) 11 BOM CK 0068

Hon'ble Judges : Ravindra V.Ghuge, J

Bench : Single Bench

Advocate : Supriya Pansambal, V.D. Gunale, R.D. Reddy

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The issue raised in this petition is as to whether a delinquent employee can be granted interim relief in the nature of preventing the employer from issuing the order of dismissal from service by way of punishment, at the Second Show Cause Notice Stage, prior to framing of the first two issues pertaining to the domestic enquiry and the findings of the Enquiry Officer.
3. The petitioner joined employment with the respondent as a "clerk" in 2008. He was charge sheeted on 19/07/2014. Charge of mis-appropriation was levelled against him with reference to issuing monthly student passes. A domestic enquiry, as per the Discipline and Appeal Rules of the MSRTC, was conducted and he was issued with a second show cause notice dated 24/12/2014 proposing the punishment of dismissal from service.
4. The petitioner approached the Labour Court by preferring Complaint (ULP)

No.5/2015 u/s 28(1) of the MRTU and PULP Act, 1971 r/w items 1(a, b, d, f and g) of Schedule IV. He also moved an application Exh.U-2 for interim relief u/s 30(2) praying that the Corporation be restrained from issuing the order of punishment. The Labour Court granted ex-parte ad-interim relief to the petitioner and issued notice to the Corporation. Subsequently, by the impugned order dated 29/03/2019, the Labour Court rejected Exh.U-2 and vacated the ad-interim protection.

5. The petitioner approached the Industrial Court by preferring Revision (ULP) No.35/2019 u/s 44. By the impugned interlocutory order dated 09/10/2019, the application for interim relief Exh.U-2, has been rejected.

6. The learned Advocate for the petitioner has strenuously criticized the impugned orders and has canvassed the 9 grounds for challenge formulated in the memo of the petition. She has raised the issue as to whether interim relief in the nature of preventing the employer from issuing the order of dismissal from service as punishment, could be granted. The pleadings set out in the complaint indicate that the petitioner has not challenged the legality and the validity of the domestic enquiry as well as the findings of the Enquiry Officer. It is contended that in matters wherein a litigant approaches the Labour Court against the proposed punishment of dismissal from service, interim protection needs to be granted and the Law should not permit the employer to perpetuate the illegality by issuing the order of punishment, considering the judgment of the learned Division Bench of this Court in the matter of Ashok Vishnu Kate and others vs. M.R.Bhope, Judge, Labour Court and Hindustan Lever, 1992 (I) CLR 531.

7. The learned Advocate for the respondent/Corporation submits that both the impugned orders are just, fair and proper and need not be interfered with. The supervisory jurisdiction of this Court in labour matters is limited, akin to the revisional jurisdiction of the Industrial Court u/s 44. She further submits that no sympathy can be shown towards such a delinquent employee and protecting the service of such an employee would actually amount to rewarding him for his misdemeanors.

8. She has placed on record the default card of the petitioner who is a traffic controller at the Udgir Depot. Same is marked as "X" for identification. She points out that the petitioner has a highly blemished past service record. Offence Nos. 524/2011, 466/2012, 17/2014, 43/2014 and 249/2016, pertain to acts of misappropriation. Besides these offences, there are two more offences, one pertaining to misappropriation of Rs.3324/- in 2018 and one act of violently breaking the front windscreen and a windowpane on the left side of the S.T. bus causing a loss of Rs.15,000/- to the MSRTC and abusing a driver. These 2 offences are presently being enquired into under the Discipline and Appeal Rules by the Corporation.

9. Having considered the submissions of the learned Advocates for the respective sides and in view of the issue raised by the learned Advocate for the petitioner, it

needs to be considered as to whether in every case of disciplinary action in which the punishment of dismissal from service is proposed or imposed, the Labour Court should interfere and prevent the employer from initiating any action or granting equitable interim relief after termination or dismissal.

10. It would be apposite to refer to the judgment delivered by the learned Division Bench of this Court in the matter of Ashok Vishnu Kate (supra). This Court had concluded that in appropriate cases, the Labour Court can invoke its jurisdiction under Item 1 of Schedule IV of the 1971 Act without waiting for the employer to proceed to issue the order of dismissal, if the Court is prima-facie convinced that the proposed punishment would amount to an unfair labour practice under Item 1. Paragraph Nos.4, 8 and 9 read as under:-

"4. The Government of Maharashtra after taking into consideration the report of the Committee decided to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings and to provide for prevention for certain unfair labour practices. The Government also considered it necessary to constitute an independent machinery For fulfilling the dual purpose of according recognition to unions and of enforcing provisions relating to the unfair labour practices. Accordingly, the State Legislature passed an Act which came into force from February 1, 1972.

The Preamble to the Act sets out that the legislation was passed to provide for the recognition of trade unions for facilitating collective bargaining and to define and provide for the prevention of certain unfair labour practices. The preamble further sets out that the legislation is also to provide for Constitution of Courts as independent machinery for enforcing the provisions relating to unfair practice and to provide matters connected with the purposes aforesaid. Section 3(16) of the Act prescribes that 'unfair labour practices' means unfair labour practices as defined in Section 26. Section 26 provides that 'unfair labour practices' mean any of the practices listed in Schedules II, III and IV of the Act. Schedule II sets out unfair labour practices on the part of the employers and various items under this Schedule have reference to practices which have relation to the Union activities. Schedule III deals with unfair labour practice on the part of the trade unions, while Schedule IV sets out general unfair labour practices on the part of employers. Item No. 1 of Schedule IV reads as under-

"1. To discharge or dismiss employees-

(a) by way of victimisation;

(b) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(c) for patently false reasons;

(d) on untrue or trumped up allegations of absence without leave;

(e) in utter disregard of the principles of natural justice in the conduct of

domestic enquiry or with undue haste.

(f) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment".

The Legislature was conscious that the unfair labour practice set out in Schedules II, III and IV may not be an exhaustive list and from time to time a person may resort to practices which are unfair labour practices and therefore conferred power upon the State Government to add or alter the items in the Schedule after obtaining the opinion of the Industrial Court. Regulation 147 framed by the Industrial Court in exercise of powers conferred under Section 33 of the Act requires the Members of Industrial Court to submit a report upon any unscheduled unfair labour practice which comes to the notice of the President of the Industrial Court to the State Government and on receipt of such report the State Government is entitled to take action under Section 53 of the Act.

Section 27 of the Act issues a fiat that no employer or union and no employees shall engage in any unfair labour practice. Section 28 sets out the procedure for dealing with the complaints relating to unfair labour practices and Sub-section (1) inter alia provides that where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer may file a complaint before the Court competent to deal with such complaint, Section 5 of the Act prescribes that the Industrial Court shall decide the complaints relating to unfair labour practices except the practices falling in Item 1 of Schedule IV. The practices falling under Item 1 of Schedule IV are dealt with by the Labour Court in accordance with provisions of Section 7 of the Act. Section 30 of the Act sets out the powers of Industrial and Labour Courts, while deciding the complaints and Sub-section (1) provides that where a Court decides that any person has engaged in or engaging in any unfair labour practice, then the Court may (a) declare that an unfair labour practice has been engaged in or is being engaged in by that person, and (b) direct all such persons to cease and desist from such unfair labour practice and take such affirmative action as may in the opinion of the Court is necessary to effectuate the policy of the Act. Sub-section (2) of Section 30 confers power upon the Court to pass interim order, including a temporary relief or restraining order as it deems just and proper, including directions to withdraw temporarily the practice complained of pending final decision. The failure to comply with the order of the Court is made punishable by conviction with imprisonment which may extend to three months or with fine which may extend to Rs. 5000/- by provisions of Section 48 of the Act.

8. Before examining the decision of the learned single Judge reported in 1989 II CLR Page 132, Divisional Commissioner, M.S.R.T.C., Wardha v. Presiding Officer, Industrial Court of Maharashtra, Nagpur and Anr., it is necessary to state that right from the inception of the Act in the year 1972 the Industrial Court and the Labour Courts have consistently taken the view that the Labour Courts had

jurisdiction to entertain a complaint under Item 1 of Schedule IV even prior to passing of the order of discharge or dismissal of an employee. The Full Bench of the Industrial Court taking into account various provisions of the Act concluded that even intended, proposed or apprehended discharge or dismissal gives cause of action to the employee to lodge a complaint and the Labour Court has jurisdiction to entertain the same. The learned single judge held that commission of unfair labour practices alone gives entitlement in favour of the aggrieved person to invoke Section 28 and such entitlement cannot be derived as against the proposed contemplated, anticipated or apprehended unfair labour practice. The learned Judge observed that Section 28 does not contemplate unfair labour practices which are in the womb, and the term "is engaging in unfair labour practice" does not mean likely to engage" or going to engage". The learned Judge felt that unfair labour practices are specifically demarcated and as the Act is semi-penal in nature, the entries in the Schedule and the provisions cannot be construed liberally. We are afraid we cannot share the view of the learned Judge. It was not pointed out to the learned Judge that the unfair labour practices commence as soon as the employer resorts to any mode set out in Item 1 (a) to (f) of Schedule IV of the Act and the remedy for such unfair labour practice need not be postponed till the actual order of discharge or dismissal is passed. The unfair labour practices are specifically demarcated but it is not correct to suggest that the unfair labour practice comes into existence only on passing of the order of discharge or dismissal. The attention of the learned Judge was not invited to the fact that every discharge or dismissal does not necessarily give cause of action to file complaint under Item No. I of Schedule IV but only those dismissals or discharges which are preceded by unfair labour practices set out under Item 1. In other words the cause of action for lodgment of a complaint arises on employer resorting to unfair labour practices and the cause of action for seeking redressal is not postponed till the practice culminates into the drastic consequences. The observation of the learned Judge that the Act is semi-penal is also not accurate. The resort to unfair labour practice by itself is not made an offence but refusal to carry out the orders passed by the Court under Section 30 are made punishable under Section 48 of the Act. The learned Judge felt that Item 1 (a) of Schedule II refers to threatening employees with discharge or dismissal, and as the words "threatening employees with discharge or dismissal" are not employed in Item 1 of Schedule IV, the Legislature felt that the employee can file complaint and the Labour Court can entertain the complaint only after termination of the employment. We are unable to agree with the view of the learned single judge. The right to seek relief is not postponed till proceedings reach the finality culminating imposition of punishment. The employee cannot be driven to long drawn litigation even though the punishment is imposed by resort to unfair labour practice. In our judgment, in view taken by the learned single Judge is clearly unsustainable and we overrule the same.

The other decisions recorded by the learned single Judges following the decision recorded at Nagpur and reported in 1992 (2) LLJ 384, Dalal Engineering Pvt. Ltd.

v. Ramrao Bhaurao Sawant and Ors. and 1991 Labour Industrial Cases 2140, Indian Hotels Co. Ltd. v. D.T. Pandey and Anr., are also overruled.

9. Though the employee is entitled to approach the Labour Court complaining about unfair labour practices under Item 1 of Schedule IV of the Act even prior to passing of the order of discharge or dismissal, it is necessary to sound a note of caution about exercise of powers granting interim relief under Sub-section (2) of Section 30 of the Act. The Labour Court is undoubtedly entitled to pass order directing the employer to cease and desist from unfair labour practices or even to take affirmative action as may be in the opinion of the Court necessary to effectuate the policy of the Act. The Labour Court is also entitled to pass interim orders, including any restrictive order directing the employer to withdraw temporarily the practice complained of pending final disposal. The powers conferred on the Labour Court or the Industrial Court, as the case may be, are of considerable importance and the Court exercising the power should be very vigilant in ensuring that interim orders do not result in stifling the inquiry proceedings, Merely because an employee complains about the unfair labour practices by the employer during the inquiry, the Labour Court need not straightway proceed to pass interim orders which would result in postponing the inquiry. The management has a right to conduct an inquiry which may lead to discharge or dismissal and that right should not be curtailed or restricted without substantial proof that the employer is indulging in unfair labour practice as set out under Item 1 (a) to (f), while conducting the proceedings. It is not in every case that the Court should proceed to pass interim order on lodgment of a complaint, but care should be taken to ascertain whether the employee has made out a strong prima facie case indicating that the grievance about unfair labour practice is substantial. The Court should realise that unnecessary postponement of an inquiry may cause serious hardship both to the employer and the employee and therefore application for the interim orders should be examined with a critical scrutiny. We do not wish to make any observations as to how the judicial powers should be exercised by the Court, but we hope and trust that the powers would be exercised with care and caution so as not to cause hardship either to the employer or the employee."

[Emphasis supplied]

11. Hindustan Lever had then carried the said matter to the Hon'ble Apex Court, reported as Hindustan Lever Ltd., Vs. Ashok Vishnu Kate and others [(1995)6 SCC 326]. While sustaining the law laid down by the learned Division Bench that Item 1 of Schedule IV can be invoked at the penultimate stage, which is prior to the dismissal from service, a note of caution was sounded by the Hon'ble Apex Court in paragraph No.54 which reads as under:-

"54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing

orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of chargesheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated."

12. While considering the scope of Item 1 and the parameters for granting relief in such cases, the Hon'ble Apex Court held in paragraph Nos. 41 to 43 as under:-

"41. In this connection, we may usefully turn to the decision of this Court in *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation* (1985 (4) SCC 71) wherein Chinnappa Reddy, J., in para 4 of the Report has made the following observations:

"The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum- Labour Court* we had occasion to say.

Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

42. Francis Bennion in its 'Statutory Interpretation' Second Edition, has dealt with the Functional Construction Rule in part XV of his book. The nature of purposive construction is dealt with in Part XX at page 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by -

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

At page 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way-

... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."

43. Following the aforesaid rule of construction, therefore, we must hold that the interpretation of Item 1 of Schedule IV of the Maharashtra Act as canvassed by the learned counsel for the appellant and the intervenors would frustrate the very scope and ambit of the Maharashtra Act, in effectuating the prevention of the alleged unfair labour practice. While on the other hand, if a wider interpretation is placed on the relevant provisions of Item 1 of Schedule IV, as discussed earlier, apart from not straining the language which even may become permissible on the rule of purposive construction, the said construction would fructify the very purpose for which the Maharashtra Act was enacted."

13. The learned Advocate appearing on behalf of the Corporation submits that the Labour Courts in the State of Maharashtra have hardly abided by the note of caution voiced by the Hon'ble Apex Court in the above reproduced paragraph No.54. Practically, in every matter in which the second show cause notice proposing the punishment of dismissal is challenged, the Labour Courts have been granting protection. It is hardly observed that protection against the

proposed punishment is to be granted in such cases where the judicial conscience of the Court is convinced that the proposed punishment would amount to an unfair labour practice (ULP) under Item 1.

14. The Hon'ble Apex Court has held in *Damoh Panna Sagar Rural Regional Bank and another Vs. Munna Lal Jain* [2005 (104) FLR 291], that a Court should not interfere with the punishment if the misconduct appears to be grave and serious. Merely because the punishment may appear to be disproportionate, would not be a ground to cause an interference. The punishment must appear to be shockingly disproportionate to the seriousness and the gravity of the misconduct. In short, the judicial conscience of the Court should be shocked by the quantum of the punishment while assessing the magnitude of the misconduct. In doing so, the past service record of the employee must be assessed since a blemished past service record would amount to an aggravating factor.

15. The conclusions drawn by the Hon'ble Apex Court in paragraph Nos.14 to 18 read thus:-

"14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (*supra*) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

15. To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

16. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect.

17. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in *Disciplinary Authority-cum- Regional Manager v. Nikunja Bihari Patnaik* (1996 (9) SCC 69), it is no

defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

18. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

[Emphasis supplied]

16. In the matter of *Mumbai Cricket Association Vs. Pramod G. Shinde* [2011 (7) All M.R. 678 = 2011 I CLR 745, this Court has concluded that interim relief in the nature of reinstatement in service or paying subsistence allowance, is unconscionable. The two distinct category of employees i.e. one suspended pending departmental enquiry and other facing a de novo enquiry in Court in a reference challenging his dismissal, cannot be equated, so as to permit the latter to claim subsistence allowance till conclusion of the reference under section 10 of the Industrial Disputes Act, 1947. The order of dismissal remains and is not set aside. If upheld by the Court, it will be after the order of the Court in that behalf. However, it relates back to the date of punishment. If what is postponed is its coming into effect or operation, then, the argument that it is held in abeyance must be straightway rejected. It cannot be said that because the Court grants the employer an opportunity to adduce evidence to prove the charges of misconduct, it will be obliged to direct the employer to pay subsistence allowance to the employee. That would mean that the order of dismissal already passed against the employee is set aside and substituted by his suspension. That would

be creating a situation wherein the order of the Court permitting de novo enquiry means an order of suspension of the employee enabling him to claim subsistence allowance. If the charges of misconduct are grave and serious and the employee is already dismissed, then, paying him any subsistence allowance or sustenance allowance which may in a given case be 75% or more of his last drawn wages, would mean that he is allowed to resume work although the employer has already dismissed him. Ultimately, if the dismissal is justified by the employer, then, an order will have to be made directing the employee to bring back the monies already paid. Thus, there will be no justification for providing payment of subsistence allowance to the workman where he is dismissed for misconduct after due enquiry and on scrutiny by the Labour Court/ Tribunal enquiry is found to be valid."

17. In *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nukarana Sangha Etc.* [2000 AIR SCW 3439 = AIR 2000 SC 3129 = (2000) 7 SCC 517], the Hon'ble Apex Court has concluded that an act of misappropriation is in itself a grave and serious misconduct. No leniency can be shown towards an employee and the amount misappropriated is not germane to the inflicting of the punishment of dismissal from service. The learned Division Bench of this Court has also adopted a strict view in the matters of misappropriation in *P.R.Shele Vs. Union of India and others* [2008 (2) Mh.L.J. 33].

18. In the light of the above, this Court is called upon to consider as to whether ex-parte ad-interim protection to a delinquent at the penultimate stage (prior to the issuance of the order of punishment of dismissal) could be granted within the parameters set out by the Hon'ble Apex Court in *Hindustan Lever (supra)*. It is common experience in such matters that the delinquent challenges the domestic enquiry alleging violation of the principles of natural justice. So also, the findings of the Enquiry Officer are invariably challenged on the ground that the conclusions are unfair and perverse. In such cases, the two issues as regards whether the delinquent proves that the enquiry is vitiated and whether the findings of the Enquiry Officer are perverse, have to be framed as a matter of Rule keeping in view the law laid down by the Hon'ble Apex court in the matters of *Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd.*, [AIR 1965 SCC 1803], *Workmen of Firestone Rubber and Tyre Company Vs. the Management and others* [(1973) 1 SCC 813], *Shambhu Nath Goyal Vs. Bank of Baroda* [1984 (4) SCC 491] and *Bharat Forge Company Ltd., Vs. A.B. Zodge and another* [AIR 1996 SC 1556].

19. In *Colour Chem Ltd., and others Vs. A.L.Alaspurkar and others*, [1993(III) LLJ 838], this Court has concluded that if the punishment proposed or awarded to an employee is shockingly disproportionate, protection to a limited extent can be granted. However, punishment of dismissal from service for a minor misconduct is impermissible. Paragraph Nos. 6, 7 and 9 lay down the law thus :-

"6. It is an elementary principle of construction of a statute that the legislature

must be deemed to be averse of all the law as laid down by the Courts upto the date of the enactment of the statute under interpretation. Hence, while interpreting the words "shockingly disproportionate punishment" used in Item 1 (g) of Schedule IV of the Act, we cannot ignore the body of the case law on the subject which had developed till the enactment of the Act in 1971. The judgment of the Supreme Court in Hind Construction's case (supra) and of this Court in Sarabhai Chemical's case lay down the test of what is "shockingly disproportionate punishment". The key words are "shockingly" and "disproportionate". Something would be shocking only if it drastically deviates from accepted norms of behaviour. The punishment would therefore be shockingly disproportionate if the factors, which are reasonably required to be considered for punishment by normal employers, have been disregarded. This is precisely the test postulated by the Supreme Court in Hind Construction's case (supra). This very familiar concept has been incorporated in Clause (g) of Item 1 of Schedule IV of the Act. Hence, I am unable to accept the extreme contention canvassed by Mr. Rele that each one of the clauses of Item 1 (g) of Schedule IV of the Act has to be read conjunctively with the other before a finding of unfair labour practice can be arrived at. In my view, a better reading of this section would be the one which is harmonious with and assimilates the principle enunciated by the Supreme Court in Hindi Construction's case (supra). It is possible that a punishment may be imposed for misconduct of a minor or technical nature and this, per se, may amount to shockingly disproportionate punishment. If, however, the misconduct proved is neither minor, nor technical, the punishment has to be judged in the light of what a reasonable employer would have done in the circumstances. A reasonable employer would have balanced several conflicting factors before taking the decision to impose the extreme penalty of dismissal or discharge by way of punishment. [What the factors are is indicated in Item 1(g) of Schedule IV of the Act.] The factors are: (a) the nature of the particular misconduct proved and (b) the past record of service of the employee. A reasonable employer would balance these conflicting factors and arrive at a decision as to whether the extreme punishment of dismissal was called for or not. Conversely, imposition of the extreme punishment of dismissal without having regard to these two conflicting factors would render the punishment "shockingly disproportionate" within the meaning of Item 1(g) of Schedule IV of the Act.

7. Though, Mr. Deshmukh, learned advocate appearing for the employees, strenuously canvassed the contention that the jurisdiction under Clause (g) of Item 1 of Schedule IV of the Act was intended to give wider powers to the Court, similar to the powers under Section 11-A of the Industrial Disputes Act, I am unable to accept this extreme contention also. The two jurisdictions are radically different and, though they may perhaps overlap to some extent, the purposes of the two jurisdictions are distinct and the machineries diverse. The Industrial Disputes Act, as the preamble of the Act itself indicates, is an Act "to make provision for the investigation and settlement of industrial disputes." The

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 is an Act "to define and provide for the prevention of certain unfair labour practices; to constitute Courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid." It cannot be forgotten that the Industrial Disputes Act held sway over the field of Industrial adjudication right from the year 1947. An elaborate system of industrial jurisprudence, particularly with reference to adjudication of disputes pertaining termination of service of a workman, had been built up. In this state of law, the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act was enacted in the year 1971 (with effect from 1st February, 1972). As a matter of chronological perspective, it needs to be noted that the Industrial Disputes Act was amended by Act 45 of 1971 (with effect from 15th December, 1971) and Section 11-A was incorporated into the Industrial Disputes Act. It was this newly added Section 11-A which invested Industrial Adjudicators with wider powers of interference with an order of discharge or dismissal, (sic) were satisfied that such an order was not justified. "This section came to be considered depth by the Supreme Court in *Workmen of Firestone Tyres & Rubber Co. of India v. The Management and Ors.* 1973 (1) LLJ 278. In this case, the Supreme Court, after tracing the development of the law on the subject, interpreted the Section as empowering Industrial Adjudicators to interfere even with the findings of fact as to commission of misconduct recorded at the domestic enquiry or even with the quantum of punishment imposed on the misconduct proved, both powers which were absent hitherto.

9. Mr. Deshmukh strongly urged that even if the provisions contained in item 1 (g) of Schedule IV of the Act are not to be interpreted penumbraally under Section 11-A of the Industrial Disputes Act, the concept of 'shockingly disproportionate punishment' evolved under the decisions of the Courts was intended to and has been given a go-bye under this provision of the Act. He, submitted that under Item 1 (g) of Schedule IV of the Act, the Labour Court could interfere with a discharge or dismissal of an employee if it was subjectively satisfied that the punishment imposed was shockingly disproportionate. In my view, even this contention is an extreme contention and needs to be rejected. For reasons, already indicated in the preceding paragraphs, I am of the view that the test postulated by the Supreme Court decision in *Hind Construction case* (supra), is not done away with. It is not the mere subjective satisfaction of the Court which enables the Court to arrive at a finding of unfair labour practice under Item 1 (g) of the Schedule IV of the Act, but a judicial determination objectively based on facts which can enable the Court to exercise jurisdiction thereunder. Mere existence of the first factor indicated in Item 1 (g) of Schedule IV of the Act may, perse, lead to an inference that the punishment is shockingly disproportionate. This is exemplified in the opening clause where the extreme penalty of discharge or dismissal is imposed in the case of the misconduct of a minor or technical

nature. On the other hand, there may be cases where the misconduct proved may not be minor or technical in nature. In such a case, reasonable employer is obliged to consider the factors indicated in the section, in a reasonable manner, before arriving at a decision that the extreme punishment of dismissal or discharge should be imposed. If there is failure to have regard to the factors indicated in Item 1(g) and, if the Court, upon an assesment of all attendant circumstances, comes to the conclusion that the penalty of dismissal or discharge was such as no reasonable employer could have imposed in like circumstances, then alone the Court would be justified in recording the finding of an unfair labour practice within the meaning of Item 1 (g) of the Schedule IV of the Act. This conclusion can be reached even upon a contrast of the language used in Section 11-A with the one used in Item 1 (g) of Schedule IV of the Act While Section 11-A postulates the test of satisfaction that the order of discharge or dismissal was not 'justified', something much more is required for the purpose of Item 1(g) of Schedule IV of the Act. The construction which I am inclined to adopt would, in my view, harmonise and reconcile the two extreme contentions advanced at the Bar by the learned Advocate." [Emphasis supplied]

20. In *Colour-chem Ltd., Vs. A.L.Alaspurkar and others* [1998(I) CLR 638], the Hon'ble Apex Court crystallised the scope of the Labour Court in interfering with dismissal from service under Item 1(g) and held in paragraph No.10 as under:-

"10. For resolving the controversy centering round this point it is necessary to have a look at the relevant statutory provisions of the Act. The Act was passed by the Maharashtra Legislature in 1971 as Act No. 1 of 1972. Amongst its diverse objects and reasons one of the reasons for enacting the said Act was for defining and providing for prevention of certain unfair labour practices to constitute courts (as independent machinery) for carrying out the purposes mentioned therein one of which being enforcing provisions relating to unfair labour practices. Unfair labour practices is defined by Section 3 sub- section (16) of the Act to mean, unfair labour practices as defined in section 26'. Section 26 of the Act lays down that, "unless the context required otherwise, 'unfair labour practices mean any of the practices listed in Schedules II, III and IV". We are not concerned with Schedules II and III which deal with unfair labour practices on the part of the employer and trade unions. We are directly concerned with Schedule IV which deals with general unfair labour practices on the part of the employers. The relevant provisions of Item 1 of Schedule IV of the Act read as under:

"1. To discharge or dismiss employees

(a) by way of victimisation:

(b)

(c)

(d)

(e)

(f)

(g) for misconduct of a minor or technical character without having any regard to the nature of the particular misconduct or the past record of service of the employee so as to amount to a shockingly disproportionate punishment."

21. In *Narsinggirji Mills Vs. Abdul Rashid Ladlesab Shaikh* [1993(2) CLR 866 = 1994(2) LLJ 152], this Court has concluded that since interim relief cannot be in the nature of reinstatement in service, the Court can grant the relief of 50% wages or 75% wages in lieu of reinstatement as interim relief. The observations of this Court in paragraph No.7 read thus:-

"7. I have heard both sides at length. I have also gone through the relevant record. It is true that the approach of the learned Judge of the Labour Court is not proper. In such domestic inquiry principles of criminal jurisprudence should not be incorporated. However, after having heard both sides and taking into consideration the relevant factors I am of the opinion that though under the facts and circumstances of the case an employee should not have been foisted on the employer by way of interim reinstatement on the finding that the employee has made out strong prima facie case, he should be protected in some manner which will not be prejudicial to the interest of the maintenance of discipline."

22. In labour and service jurisprudence, the issue is quite peculiar in so far as grant of interim relief is concerned. In my view, the test would be to assess whether the punishment proposed by the employer would be proportionate to the gravity of the misconduct keeping in view the past service record of an employee. This test can be applied by assessing as to whether the proposed or awarded punishment, assuming that the charges levelled upon an employee are proved, would be shockingly disproportionate. To make it more clear, if it appears to a Court that even if the action of the employer of conducting an enquiry and the findings of the Enquiry Officer are sustainable, the proposed punishment of dismissal from service would be shockingly disproportionate, the Court can exercise its jurisdiction under Item 1(g) by granting an equitable relief to the employee within the scope of paragraph No.54 in *Hindustan Lever (supra)* and *Colour Chem (supra)*. It cannot be accepted that in every case of disciplinary proceedings, the Court should never interfere in the proposed or awarded punishment on the principle that if the delinquent finally succeeds, he would be entitled to all consequential reliefs. In the face of a clearly evident and visible shockingly disproportionate punishment, the agony and misery of the delinquent needs to be considered by the Court by suitably granting equitable relief under Item 1(g) or as the facts of the case would warrant.

23. By way of an illustration, if the past service record of an employee is clean over a considerable length of service and if the punishment of dismissal from service is proposed for a proved misconduct of unauthorized absence for a period of, viz., 10 days or 20 days or a reasonably short period, the punishment of dismissal from service would apparently be shockingly disproportionate and the

Labour Court in such a situation, can interfere to prevent perpetuation of injustice and unfair labour practices.

24. In the instant case, the petitioner is found to be guilty of committing misappropriation of Rs.6,580/-. So also, he had returned Rs.1,400/- in a connected matter after he received the charge sheet, out of fear of disciplinary action. His past service record is highly blemished. Considering the above, I do not find that the impugned orders passed by the Labour Court and the Industrial Court refusing to stay the proposed punishment of dismissal from service, could be branded as being perverse or erroneous.

25. This petition, being devoid of merit, is therefore, dismissed. Rule is discharged.