

(2001) 10 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11850 of 1994

G. Rushikeshwara Rao

APPELLANT

Vs

Vazir Sultan Tobacco Industries Ltd., Hyd. and Another

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309
Employees State Insurance (General) Regulations, 1950 — Regulation 100, 53, 58, 59, 60
Employees State Insurance Act, 1948 — Section 3, 64, 73
Industrial Disputes Act, 1947 — Section 11

Citation : (2001) 6 ALD 767 : (2002) 92 FLR 964

Hon'ble Judges : S.B. Sinha, C.J.; V.V.S. Rao, J

Bench : Division Bench

Advocate : S. Ashok Anand Kumar, for the Appellant; C.R. Sridharan and Government Pleader for Social Welfare and Labour, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—This writ petition is directed against the order of the Labour Court-1, Andhra Pradesh, Hyderabad dated 8.12.1993 in I.D. No. 72 of 1986 confirming the order-dated 14.12.1985 of the 1st respondent dismissing the petitioner-workman from service.

2. Briefly noted, the facts are: The petitioner was appointed as General worker in the 1st respondent Company on 24.12.1968 and at the time of dismissal from service he was working as B-11 worker. On 6.2.1984 the petitioner was served with a charge sheet on the ground that he was absent without leave for 107 days in the year 1983. On 13.2.1984, the petitioner submitted explanation stating that he submitted ESI certificates issued by the Medical officer from time to time. He reported for duty on 15.12.1984. On 29.1.1985 when another charge sheet for his absence from duty for a period of 185 days during the calendar year 1984 was sought to be served, petitioner declined to receive the same. Therefore, a third charge sheet was issued on 30.1.1985 for refusing to receive the charge

sheet dated 29.1.1985. According to the petitioner, though he was very much working in the company, notice was published in the newspapers stating that he refused to receive the chargesheet and that enquiry would be held against him on 2.2.1985. He reported before the enquiry officer on 2.2.1985, but reported sick subsequently. An ex parte joint enquiry was held against the petitioner on 10.2.1985 in respect of all the charge sheets and by order dated 14.2.1985 he was removed from service. A dispute was raised before the Labour Court in I.D.No. 72 of 1986 and the Labour Court by order dated 8.12.1993 upheld the order of removal of the petitioner from service.

3. In the counter-affidavit filed by the company, it was stated that the petitioner was a chronic absentee and he was more interested in political activities. During the year 1982, he attended to duty for 90 days; in 1983, he attended only for three days and for the year 1984 up to 14.12.1984 he attended only for one day. He was surviving on the rolls of the company by submitting ESI Certificates at irregular intervals. As per regulation 59 of Employees State Insurance (General) Regulations, 1950, every insured person should submit Intermediate certificates at intervals of not more than seven days each, commencing from the date of the first certificate. If the gap between one intermediate certificate and another exceeds seven days, the intervening period would be deemed to be non-certification of sickness and the workman would be deemed to be absent without leave. Issuance of the aforementioned three charge sheets is not disputed. It was stated that though the petitioner attended the enquiry on 2.2.1985, the same was adjourned to 3.2.1985 at his request. Again at his request it was adjourned to 7.2.1985 and on that day he appeared at 2.00 p.m. and represented that his representative Mr. M.C. Manik Rao would come later and at his request the Time keeper was examined and various documents were marked on that day. He did not cross-examine the timekeeper nor he sought for any adjournment and though for continuation of the enquiry it was adjourned to 10.2.1985 he did not turn up on that day. The enquiry officer set the petitioner ex parte and proceeded with the enquiry and on that day timekeeper was recalled and examined. The departmental Supervisor Mr. Yeshwanth Rao and the Assistant Manager (Industrial Relations) Mr. U. Vasudeva Rao were examined and further documents were marked, and the enquiry was closed on that day. The certificate issued by Ramnagar Burial Ground to the effect that he attended the funeral on 10.2.1985 reveal that the same did not relate to any of his relatives.

4. When the Writ petition initially came up for hearing, a division Bench of this Court passed the following order on 5.8.1997:

Heard both sides. Having perused the award, we find that the Labour Court, Hyderabad did not commit any error in holding guilty of the petitioner. However, the punishment of removal from service ordered by the Labour Court is severe. Hence, we hold that the petitioner is entitled for reinstatement without back wages and without continuity of service. The impugned award is accordingly modified. With the above modification, the writ petition is disposed of. No costs.

5. The matter was carried in appeal before the Supreme Court. The Supreme Court by order dated 13.11.1998 set aside the order of the Division Bench of this Court in Civil Appeal No. 724 of 1998 and remanded the matter for fresh disposal in accordance with law on the ground that no reasons were assigned for interfering with the punishment. It was observed:

The order reproduced above is cryptic and gives no reasons. Once the High Court found that the Labour Court did not commit any error in holding the appellant guilty, it could not have legally interfered on the quantum of punishment without setting out strong reasons for so doing. Since the order is wholly without reason, the same cannot be sustained. Consequently, the appeal is allowed. The impugned order dated 5th August, 1997 passed by the High Court is set aside and the case is remanded back to the High Court for fresh disposal in accordance with law after affording full opportunity of hearing to the parties.

6. The learned counsel for the petitioner would submit that in the event sickness of a person is accepted, no order of dismissal can be passed. The learned counsel would further submit that the purported clarifications dated 13.8.1984 and 6.8.1982 issued by the Deputy Regional director of Employees State Insurance Corporation must be held to be wholly illegal and without jurisdiction inasmuch as the said purported clarification is contrary to or inconsistent with the provisions contained in Section 73 of the Act and Regulation 59 of the ESI Regulations. Strong reliance in this connection has been placed on the decision of the Apex court in *Municipal Corporation of Greater Bombay Vs. The B.R.S.T. Workers Union*, .

7. The learned counsel, drawing our attention to Clause 12(g) of the Factories Standing Order, submitted that no misconduct could be said to have been committed within the meaning of 22(2)(f) of the Factory Standing Orders inasmuch as the petitioner was enjoying ESI sickness. Learned counsel would contend that the purported inference to the effect that the petitioner did not make himself present before the enquiry was arrived at only by way of implication. According to the learned counsel, having regard to the fact that his absence on the date of enquiry is supported by the certificate issued by the Burial ground, a vital factor, which had not been considered by the enquiry officer, the entire enquiry was vitiated. It was urged that although 63 previous misconducts were referred to in the counter, neither any charge sheet in relation thereto has been drawn nor any enquiry has been conducted. In any event, contends the learned counsel for the petitioner that this Court while exercising its jurisdiction under Article 226 of the Constitution of India, may also interfere with an order of punishment in terms of Section 11A of the Industrial Disputes Act. Strong reliance in this connection has been placed on the decisions of the Apex court in *Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another*, , *Management of Hindustan Machine Tools Ltd., Bangalore Vs. Mohd. Usman and Another*, and *Rajnagar Textile Mills Vs. Dahyabhai Mohanbhai Diwan*, and *STATE OF MYSORE v. MANCHE GOWDA AIR 1964 506*.

8. The learned counsel appearing on behalf of the respondents, on the other hand, would submit that the power u/s 11A cannot be exercised by this Court while exercising its jurisdiction under Article 226 of the Constitution of India. The learned counsel would urge that the petitioner himself has admitted the misconduct on his part and thus it was not necessary to issue any separate notice. The learned counsel would submit that as the learned Labour Court has taken into consideration all aspects of the matter, this Court should not interfere therewith. Reliance in support of the said contention has been placed on the decisions of the Apex Court in *New Shorrock Mills Vs. Maheshbhai T. Rao*, , and *MANAGEMENT OF HINDUSTAN MACHINE TOOLS LTD. BANGALORE v. MOHD USMAN* (supra).

9. The points, which arise for consideration, are:

1. Whether any disciplinary proceeding could have been initiated against the petitioner having regard to the provisions of the ESI Act and ESI Regulations?

2. Whether the Award of the Labour Court is sustainable in law?

Points 1 and 2:

10. Employees State Insurance Act, 1948 has been enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury-and to make provision for certain other matters in relation thereto. Section 3 of the Act provides for establishment of employees" State Insurance Corporation. Section 59 provides for establishment and maintenance of hospitals etc., by Corporation. Sections 64 and 73 read thus:

64. Recipients of sickness or disablement benefit to observe conditions: A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement)

(a) shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under this Act and shall carry out the instructions given by the medical officer or medical attendant in charge thereof;

(b) shall not while under treatment do anything which might retard or prejudice his chances of recovery;

(c) shall not leave the area in which medical treatment provided by this Act is being given, without the permission of the medical officer, medical attendant or such other authority as may be specified in this behalf by the regulations; and

(d) shall allow himself to be examined by any duly appointed medical officer or other person authorised by the Corporation in this behalf.

73. Employer not to dismiss or punish employee during period of sickness, etc.:-

(1) No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit or shall he, except as provided under the regulations, dismiss,

discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

(2) No notice of dismissal or discharge or reduction given to an employee during the period specified in Sub-section (1) shall be valid or operative.

11. Regulations 59, 60 and 64 of the ESI Regulations read as follows:

59. Intermediate Certificate: If the final certificate is not issued within seven days of the date of the first certificate, an insured person shall, except where the case is covered by Regulation 61, submit certificates in the form of intermediate certificates (Form 10) at intervals of not more than seven days each, commencing from the date of the first certificate.

60. Final medical certificate before commencing work for wages: Every insured person shall obtain a medical certificate in the form of a final certificate before he takes up any work for wages.

64. Failure to submit medical certificate if a person who intends to claim sickness benefit or disablement benefit for temporary disablement fails to submit to the appropriate Local Office by post or otherwise the first medical certificate or any subsequent medical certificate within a period of three days from the date of issue of such certificate he shall not be eligible for that benefit in respect of any period (i) in the case of a first certificate, more than three days before the date on which the certificate is submitted to the appropriate Local Office:

Provided that the appropriate Regional Office or other office as authorised by the Director-General may relax all or any of the provisions of this regulation in any particular case, if it is satisfied that the delay in submitting a certificate was due to bona fide reasons.

12. By reason of letter dated 6.8.1982 addressed to the respondent- company which was marked as Ex.A. 24 before the Labour Court, the Deputy Regional Director of Employees State insurance in regard to issuance of medical certificates clarified thus:

In this connection, I am to inform you that the question of issue of Regulation Certificates covering back periods has been examined and it is felt that these certificates enjoyed legal sanctity in view of Regulation 53 and its provision and Regulation 100 of ESI (General) Regulation 1950 whereby discretionary powers are conferred on the Corporation and the Director General and other officers for relaxing the Regulations and accepting the irregular certificates. Such regularisation of irregular certificates does not however prejudice the rights of the employer u/s 73 of the ESI Act 1948 read with Regulation 98 of ESI (General) Regulations, 1950.

13. By another letter-dated 13.8.1984, which was marked as Ex.A. 24, it was further clarified:

Kindly refer to your letter-dated 8.8.1984 seeking clarification on the above subject cited above. In this context a reference is invited to the Section 64 of ESI Act, which is self-explanatory. Any violation of this provision by insured person under certification due to the sickness/temporary disablement is termed as Aggravation.

The aggravation remarks incorporated by Insurance Medical Officer on certificate arc for the local office in order to take necessary action under Regulation 99 of the ESIU (Gen.) Regulation of 1950.

The position was explained to your member who met me and to the Regional director on 8.8.1984.

14. Admittedly, the petitioner was served with charge sheets on 6.2.1984, 29.1.1985 and 31.1.1985 and a joint enquiry was held in relation to the said charge sheets.

15. By order-dated 14.2.1985, the enquiry officer found the petitioner guilty of the charges levelled against him. The past service record allegedly revealed that the petitioner had been inflicted with 63 minor punishments such as censure, suspension etc. It was also found as of fact that his attendance had been very poor and he had attended only for three days out of 303 factory working days in the year 1983. During the year 1984 up to 14.12.1984 he worked only for one day.

16. The Labour Court upheld the validity of the domestic enquiry and the correctness or otherwise thereof has not been questioned before us. In the award-dated 8.12.1993 the Labour Court considered the evidence, which has been brought on record by the petitioner herein and rejected the contention that he had not been unduly victimised.

17. As regards the submission of the petitioner before the 2nd respondent as to why he could not report for work and had to apply for leave as also for his absence on the day on which the enquiry was held, it was observed:

The period of assertion to be considered as aggravated his incapacity period I.P. has only produced P.M.C. for the above period and no details of the treatment he has taken are known. The petitioner also stated that earlier on 7.11.84 Dr. Chandrasekhar also issued him Ex.A. 12 medical certificate whereas he examined the petitioner and said that he was of the opinion that the insured person (petitioner) still needs absention from work.

18. Another contention of the petitioner is that one Sri Swamy who was also proceeded in a disciplinary enquiry although had been dismissed from service, but, subsequently he had been taken back to service, whereas he was denied such benefit. The learned Labour Court held that the petitioner has not

mentioned in his application marked as Ex.A. 17 or in the evidence the nature of sickness suffered during those periods disabling him to attend to his duties. It was further noticed that Mr. Swamy was reinstated as he improved his attendance in the year 1985 and he had also earned an annual increment besides he furnished an undertaking to the company and the Union had also given an assurance on his behalf whereas there was no such thing in the case of the petitioner.

19. The fact that the petitioner herein indulged in politics and has contested for the midterm elections of the Assembly in 1984 is not disputed. The Labour Court in Para 11 of the award held:

P.W.1 in his cross-examination said that he has not sent communication to the respondent management between 10.2.85 to 14.2.1985 as he was sick. He denied to the suggestion that his being sick he absented from work as he was otherwise engaged in Trade Union activities since he is one of the leaders of it. Petitioner admitted that Ex.A. 11 did not show the nature of sickness with which he suffered during the period covered by Ex.A. 11. Ex.B. 2 is the letter written by the petitioner dated 23.9.1985 to the respondent wherein he stated that he was given to understand that he was removed from service for his absence from duties during the period 16.2.1983 to 3.3.83 and 3.5.84 to 25.5.84 and 13.9.84 to 6.11.84. This Ex.B. 2 is identical with that of Ex.A-17. Petitioner admitted that he sent copy of Ex.B. 2 to their union president Badarivasalputti. Petitioner admitted that he did not mention the nature of disease or sickness with which he suffered during the period of his absence mentioned in Ex.B. 2. Petitioner admitted that he has not able to examine the Medical officer who treated him like Dr. B. Sharma and Dr. Chandra Sekhar as he does not know their addresses. Petitioner denied that he obtained false medical certificates using his influence as trade union leader.

20. The petitioner admitted that the letter 15.12.1984 of the management asking him to appear before the Medical Board was sent to correct address, but the same was returned unserved with a postal endorsement that party continuously absent. In that situation, it was for the petitioner to prove that a legal presumption arising thereupon to the effect that an adverse should be drawn against him was not correct.

21. The learned Labour Court further held that the petitioner admitted that he was aware of the meaning "aggravation" used in Ex.A. 24. Labour Court further noticed the admission of the petitioner to the effect that he had not informed the management about the fact that he had been contesting the elections.

22. The Labour Court upon taking into consideration the evidence of the petitioner as also the Management rejected the contention of the former to the effect that he had been victimised. Having closely scrutinised the award, we find no illegality in the said finding recorded by the Labour Court.

23. As regards his plea that he had been on ESI leave; the Labour Court as of

fact found as under:

As per the documentary evidence available, it is established that the petitioner has not attended the ESI hospital for treatment and has not otherwise established that he was really sick and he took treatment from any doctor by examining the said doctor before the enquiry officer and producing the necessary record of his sickness like producing the medical prescriptions, chits and the nature of treatment lie obtained. The Labour Court held that the company has taken a rightful action against the petitioner and awarding punishment of removal from service on a finding that he was a chronic absentee cannot be said to be an act of victimisation. It was further held that if the respondent has not shown grace in condoning such continued mistake even if it was condoned earlier by the respondent, the same would not amount to victimisation.

24. As regards the question whether the punishment imposed upon the petitioner was grossly disproportionate to the gravity of the charge, the Labour Court held:

In this case, the petitioner has failed to show that his removal from service is not shockingly disproportionate nor is it shown that the petitioner singularly discriminated by the respondent. By non-showing of mercy by the respondent on petitioner does not amount to victimisation. Petitioner either before this Court or before the enquiry officer failed to establishment the reality of his suffering with sickness. In fact the Petitioner has also failed to show the nature of sickness with which he suffered during any of the periods mentioned in the charge sheet. In these circumstances of the case, I find the order of removal of the petitioner from service is not illegal and unjust and is not shockingly disproportionate.

25. In the aforementioned situation, in our opinion, this Court, in exercise of its jurisdiction under Article 226 of the Constitution cannot go into the question as to whether the petitioner could not attend the duties in the year 1983 due to ill-health. Such plea had not been raised before the Labour Court.

26. The decision of the Apex Court in MUNICIPAL CORPORATION, BOMBAY v. B.R.S.T. WORKERS UNION, has no application to the facts of the present case. This is a case where an employee has been dismissed from service for fraud or dishonesty in connection with the business of the undertaking. There the employee was found to have committed theft of brass bearings. In that connection, the Apex court held that Section 73 of the Act and Section 78(1)(d) of the Bombay Industrial Regulations Act should be read harmoniously.

27. The other decisions relied upon by the learned counsel for the petitioner, have also no application to the facts of the present case.

28. All the charges levelled against the petitioner were proved in the enquiry and the Labour Court upheld the same. As noticed hereinbefore, it is not in dispute that during the period of absence the petitioner participated in politics and also contested in the mid term elections. It is further not in dispute that the Labour Court considered the validity of the domestic enquiry as a preliminary issue and

by order dated 21.6.1988 the same has been found to be valid. The petitioner did not question the said order dated 21.6.1988. He was allowed to adduce evidence on the question that he had been victimised by the management, but he has not been able to establish the same. In a situation of this nature, we are of the opinion, that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India can neither interfere with the finding of fact arrived at by the Labour Court nor can interfere with the quantum of punishment.

29. In *MANAGEMENT OF HINDUSTAN MACHINE TOOLS LTD. BANGALORE v. MOHD USMAN* (supra) the apex Court observed:

Section 11A confers power on the Labour Court to evaluate the severity of misconduct and to assess whether punishment imposed by the employer is commensurate with the gravity of misconduct. This power is specifically conferred on the Labour Court u/s 11A. If the Labour Court after evaluating the gravity of misconduct held that punishment of termination of service is disproportionately heavy in relation to misconduct and exercised its discretion, this Court in the absence of any important legal principle would not undertake to re-examine the question of adequacy or inadequacy of material for interference by Labour Court. We are, therefore, disinclined to interfere with the order passed by the Labour Court.

30. In the instant case, the Labour Court has come to the conclusion that the punishment imposed is not disproportionate to the misconduct proved and declined to exercise the power u/s 11A.

31. In *New Shorrock Mills Vs. Maheshbhai T. Rao*, , the Labour Court despite recording a finding that the departmental enquiry held against the workman was legal and proper and that the order of discharge was not by way of victimisation, set aside the punishment of discharge and substituted the same with an order of reinstatement. In that connection, the Apex Court observed:

The Labour Court, in the present case, having come to the conclusion that the finding of the departmental inquiry was legal and proper, respondent's order of discharge was not by way of victimisation and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions and had been punished. According to the appellant there were at least three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time. Another aspect which was overlooked by the Labour Court was that on the finding of the Inquiry Officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed

the respondent from service. The appellant chose not to do so. Instead it passed an order of discharging the respondent from service. Lesser punishment having been given by the management itself there was, in our opinion, no justifiable reason for the Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent backwages was clearly unwarranted.

32. Recently a Full Bench of this Court in W.P. No. 4968 of 2000, has considered the doctrine of proportionality of punishment with reference to Section 11A of the Act and observed:

In terms of Section 11A of the Industrial Disputes Act, the Labour Court/ Industrial Tribunal has been conferred wide power to consider as to whether the punishment imposed upon a delinquent-workman is legal or justified or not but has also been conferred with power to award a lesser punishment in the event it is held that the punishment imposed is not proportionate to the gravity of misconduct charged against the delinquent-workman. However, the jurisdiction of the High Court to interfere with the quantum of punishment is limited. In *Tata Cellular Vs. Union of India*, , relying upon the decision in *COUNCIL OF CIVIL SERVICE UNIONS v. MINISTER FOR CIVIL SERVICE* (1984) 3 All. ER 935, the Apex Court while holding that the Court can interfere only when there was illegality, irrationality or procedural impropriety on the part of the authorities in its decision making process, however, had not expressed any opinion about the development of the law in the field of doctrine of proportionality. The said question came up for consideration before the Apex Court in *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, . The Apex Court held that the doctrine of proportionality is at par with the doctrine of *Wednesbury's* unreasonableness and unless it is held that the punishment imposed upon the delinquent officer is so irrational as to shocks one's conscience and that no reasonable man while reasonably exercising his power would impose the same, the High Court cannot interfere therewith.

It was stated:

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

Yet again in *State of Karnataka and Others Vs. H. Nagaraj*, , Apex Court observed:

We fail to see how the Tribunal, when it upheld the enquiry could have interfered with the quantum of punishment in this fashion. As far back as in 1989, this Court in the case of *Union of India v. Parma Nanda* (1989) SCC 303, held that the Jurisdiction of the Tribunal to interfere with disciplinary matters and punishment cannot be equated with appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or the Competent Authority where they are not arbitrary or utterly perverse. The Court said:

It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution, if there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.

The same view has been reiterated in a more recent decision of the Court in *Union of India v. G. Ganayutham*. This Court has held that the principle of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense that it was in outrageous defiance of logic or moral standards.

The matter also came up for consideration before this Court in *V. Srinivas Vs. Superintendent of Police, Medak Dist., Sangareddy, Medak and others*, and in *General Manager, Ordinance Factory, Project Yeddumailaram and Another Vs. Central Administrative Tribunal, Hyderabad and Another*, . The Apex Court in *OM KUMAR AND ORS. v. UNION OF INDIA JT 2000 (Supp.) 3 SC 92*, wherein upon taking into consideration the decision in *UNION OF INDIA v. GANAYUTHAM* evolved the doctrine of primary review and secondary review. It was held that when an action taken by the State is under challenge; the same can be interfered with only if it is found to be arbitrary so as to attract the wrath of Article 14 of the Constitution of India. It was observed having regard to the decision of the Apex Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , that arbitrariness strikes at the equality doctrine adumbrated in Article 14 of the Constitution of India, the same principles will have to be applied while applying the doctrine of proportionality. The state action, therefore, was held to be amenable to the writ jurisdiction, it was further observed that although such power could be exercised on the touchstone of doctrine of proportionality, but the Court can interfere only in the event if it is held to be so irrational or unreasonable so as to attract the principle of *Wednesbury's* Unreasonableness.

It is now a well-settled principle of law that the High Court while exercising its jurisdiction under Article 226 of the . Constitution of India cannot sit in appeal over an order of the disciplinary authority. The High Court is not concerned with the adequacy or reliability of the evidence. In *The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another*, , the Supreme Court held that if there is some legal evidence on which findings can be based, then adequacy or even reliability of that evidence is not a matter to be

canvassed before the High Court under Article 226 of the Constitution of India.

33. It is relevant to note that the petitioner has been found guilty on four occasions for misconduct. We may further notice that although there is no positive finding of fact, a suggestion had been made that the certificate issued by the Ramnagar Burial ground does not relate to any of his relatives. But that is not very much relevant having regard to the fact that the validity or otherwise of the domestic enquiry was upheld by the labour Court and the same has not been questioned by the petitioner.

34. Regulation No. 59 clearly says that if the final certificate under Regulation 58 is not issued within seven days of the date of the first certificate, the insured person shall submit intermediate certificate at intervals of not more than seven days each commencing from the date of the first certificate. It was found as of fact that the petitioner had not submitted the intermediate medical certificates at regular intervals as required under Regulation 59 of the Regulations and there were many aggravations. It is not the case of the petitioner that he is covered by Regulation 61, which provides for issuance of intermediate certificates for longer periods. Regulation 64 clearly says that where a person claiming sickness benefit or disablement benefit or temporary disablement fails to submit to the appropriate Local office by post or otherwise the first medical certificate or any subsequent medical certificate within a period of three days from the date of issue of such certificate, he shall not be eligible for that benefit in respect of any period in the case of a first certificate, more than three days before the date on which the certificate is submitted to the appropriate Local Office. However, the proviso under Regulation 64 empowers the appropriate Regional office or other Office as authorised by the Director-General to relax all or any of the provisions of the said regulation in any particular case, if it is satisfied that the delay in submitting a certificate was due to bona fide reasons. It is also not the case of the petitioner that the appropriate authority under the Regulations has relaxed all or any of the provisions of Regulation 64.

35. In a situation of this nature and having regard to the facts and circumstances of the case, we are of the view that the rights of the petitioner are not saved u/s 73 of the Act read with Regulation 59 of the Regulations. The proceedings have been validly initiated against the petitioner and the award of the Labour Court cannot be found fault with.

36. We may now consider the other aspect of the matter. The period of absence must be in relation to the period of sickness. In *HINDUSTAN AERONAUTICS LTD. v. M. SATAIAH* 1996 (1) ALD 728, this Court has held that unless the period of absence is relatable to the period of sickness, the provisions of the ESI Act would not be applicable. Section 73 of the Act merely provides that no order of dismissal shall be passed during the period when an employee is on sick leave. Having regard to the nature of the proceedings against the petitioner, it was for him to show that the charges are unfounded. It cannot be said, as has been contended by the learned counsel appearing on behalf of the petitioner that the

sickness had been accepted or by reason of long and continuous absence, he had not committed any act of misconduct. Such misconduct clearly comes within the preview of Factories Standing Order 22(2)(f).

37. In view of the aforementioned findings, we are of the opinion that it is not necessary for us to go into the larger question as to whether ESI authorities had the jurisdiction to issue the clarificatory letters referred to above.

38. For the reasons aforesaid, we find no merit in the Writ petition and it is accordingly dismissed. No costs.