

(2016) 08 GUJ CK 0016
In the Gujarat High Court

Case No : Special Civil Application No.8604, 18941 of 2005

General Manager

APPELLANT

Vs

Dashrathbhai Somjibhai Bhil

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 11A

Citation : (2016) 3 CLR 382 : (2017) 2 GLR 1144 : (2016) 3 GujLH 636 : (2016) 4 LLJ 645

Hon'ble Judges : Mr. A.J. Shastri, J.

Bench : Single Bench

Advocate : Mr. Ravi Karnavat, Advocate, for the Petitioners No.1; Mr. Y.V. Shah, Advocate, for the Respondents No.1

Final Decision : Disposed Off

Judgement

Mr. A.J. Shastri, J.—Since both these petitions are ordered to be heard together and issues are similar in nature and both these petitions arise out the common order, the petitions are taking up for disposal on the premises stated herein after.

2. The petition being Special Civil Application No.8604 of 2005 is directed against the order dated 17.3.2004 passed by learned Presiding Officer, Industrial Tribunal in Reference (I.T.C.) No.16 of 1996.

3. The respondent workman, who is petitioner in Special Civil Application No.18941 of 2005 in so far as learned Industrial Tribunal has not granted 100% back wages and granted only 50% back wages, so qua for that portion of order passed by the learned Industrial Tribunal, feeling aggrieved by the petitioner, the petitioner has filed the petition Special Civil Application No.18941 of 2005 .

4. Brief facts leading to the petitions are such that the respondent workman was initially engaged by the petitioner Railway Administration as casual labourer in 1976 and thereafter, was again engaged in the year 1982 on new project in

stores of Railway Electrification at Dahod. On account of misconduct on the part of the respondent workman, a charge-sheet came to be issued on 10.12.1987 and full-fledged departmental inquiry came to be conducted and then Respondent workman visited with a penalty of dismissal from the service vide order dated 29.7.1988. As per the Rules, the respondent workman preferred an Appeal as also Revision, but the order of dismissal was not disturbed by the Revisional as well as Appellate Authorities. It appears from record that thereafter, the respondent workman challenged the order of dismissal by way of filing Original Application No.144 of 1989 before the Central Administrative Tribunal, Ahmedabad Bench and the Central Administrative Tribunal vide order dated 27.4.1993 was pleased to partly allow the application and remanded back the matter to the Dy. Controller of Store, Railway Electrification, Vadodara, for rehearing of the appeal and directed to dispose of the same within a period of three months from the date of receipt of the order. Pursuant to the said order passed by the Central Administrative Tribunal, the Appellate Forum decided an appeal and vide order 24.5.1993, the Appeal came to be dismissed, resultantly, the respondent workman had raised an industrial dispute. The records indicate that industrial dispute appeared to have been raised on account of the fact that some of the issues, the Appellate Authority had not considered and even after direction given by the Central Administrative Tribunal, no hearing was afforded to the respondent workman.

4.1. It is also borne out from the records that the Ministry of Railways vide its order dated 1.10.1996 made a reference challenging the legality of the order of dismissal dated 29.7.1988 and then pursuance to the same, Reference came to be registered before the learned Industrial Tribunal, Vadodara, as Reference (I.T.C.) No.16 of 1996. In response to the same, the petitioner Administration has approached the learned Tribunal by way of filing written statement towards the claim statement submitted by the respondent workman vide Exhibit 5. In the said written statement submitted by the petitioner vide Exhibit 10, it was submitted before the learned Tribunal that full-fledged inquiry was conducted, wherein upon the charges having been proved, the Authority was constrained to pass an order of penalty. It was also submitted that the Reference is devoid of merits in view of the fact that pursuant to the direction given by the Central Administrative Tribunal, the Appellate Authority after application of mind, has taken a decision and therefore, it was pleaded by the petitioner Administration that the Reference itself is barred by principle of Res judicata.

4.2. During the course of adjudication of Reference, the respondent workman examined himself vide Exhibit 13 by leading oral evidence and the petitioner Administration has led oral evidence vide Exhibit 27. On behalf of the respondent workman, the Union led documentary evidence vide Exhibit 17 and some of the documents, thereafter upon consent came to be exhibited. Subsequently vide Exhibit 16, a purshis was given by the respondent workman that the respondent workman is not challenging the legality and validity of inquiry, but only a grievance is raised qua findings and the order based upon it. It was in that

context, since the purshis was submitted, the learned Industrial Tribunal refrained itself from adjudicating validity aspect of inquiry and then proceeded to examine the justifiability of the findings as also order passed by the Appellate Authority.

4.3. Before the learned Tribunal, the petitioner has raised few contentions by contending that there is no jurisdiction with the learned Industrial Tribunal to conduct the Reference proceedings. It was pleaded before the Tribunal that there is specific point of Res Judicata applied in the background of present facts. By pleading that, it was pointed out in written arguments submitted vide Exhibit 37 that Industrial Tribunal as well as Central Administrative Tribunal are parallel forums and therefore, once on earlier occasion, the Central Administrative Tribunal examined the issue in application submitted by the very Respondent workman i.e. Original Application No.144 of 1989, it was not open for the Industrial Tribunal to entertain the Reference. If ultimately the respondent workman is aggrieved by the same. it is open for the respondent to either file Review Application or file an appropriate proceedings before the appropriate Forum including High Court and certainly not before the Industrial Tribunal. It was also pointed out before the Tribunal that all issues directed by the Central Administrative Tribunal was for rehearing of an Appeal, which would not be necessitated for the Administration to grant an opportunity of personal hearing. On reading of the order of Central Administrative Tribunal, itself is making clear that no personal hearing right was conferred while reconsidering the appeal by the Appellate Forum. It was also pleaded that Central Administrative Tribunal, in view of the settled position of law, has no jurisdiction to entertain the dispute essentially pertaining to industrial dispute and substantiate the said contention, the petitioner Administration relied upon few decisions and thereby contended not to entertain the Reference and grant any relief.

4.4. It is also emerging from the records that the respondent workman was proceeded with departmental inquiry and after full-fledged departmental inquiry and penalty came to be inflicted upon and therefore, the petitioner Administration submitted that in the background of such a serious issue, it is not open for the Industrial Tribunal to entertain the Reference. To meet with this contention, the respondent workman had also submitted written arguments vide Exhibit 37 and pleaded that the fact of suppressing of involvement of the respondent workman in theft case has not been proved during the course of the proceedings and with respect to that incident of theft case, the respondent workman was acquitted from the charges and therefore, departmental inquiry which was conducted was erroneous and findings were not just and proper, rather perverse to the records and therefore, it was submitted that what has been prayed in the Reference is required to be granted in the interest of justice. Based upon this, the stand taken by the respective parties, the Industrial Tribunal vide order dated 17.3.2004 has declared dismissal of the respondent workman from the service from 29.7.1998 as bad in law and by declaring it to be violative of principle of natural justice, was ordered to be quashed and as a

consequent of it, the petitioner administration was directed to reinstate the respondent workman to the original post with continuity of service and with 50% back wages by awarding Rs.1000/- as costs, the Reference came to be disposed of. The said Reference is made subject matter of the present petitions filed by the petitioner Administration and respondent workman.

5. On 22.7.2005, this Court has passed following order and as a result of this, present petitions have come up for final disposal.

"Rule. Interim relief in terms of para-7(B) subject to compliance of Section 17-B of the Industrial Disputes Act, 1947."

6. Simultaneous proceedings which have been carried out by the respondent workman in form of the Special Civil Application No.18941 of 2005 challenging the very same order passed by the learned Industrial Tribunal in so far as it has not granted remaining 50% back wages. It was pleaded by the respondent workman that looking to the background of the facts and circumstances, the learned Industrial Tribunal while granting relief, ought to have granted 100% back wages as the petitioner has failed to prove that the respondent was in the alternate employment during the course of adjudication of Reference. It is in this background, cross petition came to be brought and the respondent workman seeking relief to the extent as referred to the above and it appears that vide order dated 16.9.2005, this Court has admitted the petition and ordered to be heard the same with the main petition i.e. Special Civil Application No.8604 of 2005. Hence, in substance, since the background of facts are substantially same, both the petition arise out of the very same order, evidence led before the Forum is also the same, this Court has thought it fit to dispose of the petitions vide this common judgment.

7. Since the petition filed by the Railway Administration is first in point of time, the same is to be dealt with first. Learned advocate Mr. Ravi Karnavat for the petitioner has contended that the order passed by the Railway Administration is not just and proper and while passing the order, there is no direction of fact arrived at by the Tribunal. The conclusion arrived at by the learned Tribunal is based upon general presumption and the evidence has not been examined in detail. It was also contended that the learned Tribunal has lost sight of the fact that when the Disciplinary Authority agreed with the report of the Inquiry Authority, the reasons in detail are not required to be assigned and only decision making process is to be examined. Therefore, order of penalty ought not have been interfered with. It was also contended that the learned Tribunal has failed to appreciate that all the charges levelled against the respondent workman were proved and there was no violation of procedure in conducting departmental inquiry. The learned Tribunal ought to have appreciated that by way of specific pursis, the validity of the inquiry was not challenged by the respondent workman. In that view of the matter, looking to the limited scope of learned Tribunal in interfering with the penalty order passed by the learned Industrial Tribunal is not just and proper. It was also contended by the learned advocate for

the petitioner that the learned Industrial Tribunal has no jurisdiction to adjudicate the Reference and it was also contended that in view of specific point of Res Judicata, it was not open for the learned Tribunal to pass an order and therefore, contended that the order passed by the learned Tribunal is without jurisdiction. It was also contended that if any order, which is passed in conflict with the order or direction of Central Administrative Tribunal, then specific remedy is available to the respondent workman to ventilate his grievance by raising an industrial dispute separately in view of the background is impermissible and therefore, the order passed by the learned Tribunal is required to be quashed and set aside.

8. Learned advocate for the petitioner submitted that under the provisions of Rules governing the disciplinary proceedings at the Appeal stage, no personal hearing is contemplated and the learned advocate submitted that a close look at the direction issued by the Central Administrative Tribunal, would make it clear that only direction is to rehear the Appeal of the respondent and has submitted that the personal hearing which is indicated, the learned Tribunal could not have observed to decide the Appeal considering all the grounds taken in the Appeal memo. This being so, a personal hearing was not to be envisaged by the respondent workman. No further contentions are raised by the learned advocate for the petitioner.

9. To oppose, the learned advocate Mr. Y.V. Shah for the respondent workman contended that the learned Industrial Tribunal has passed the order after due application of mind after giving full opportunity to the parties and therefore, the findings of the fact arrived at by the learned Tribunal does not call for any interference. It was also contended by the learned advocate for the respondent workman that the order of the penalty which has been issued was grossly disproportionate to gravity of alleged misconduct and therefore, submitted that even if the validity of the inquiry is not challenged and waived by the respondent workman, it was always open for the learned Tribunal to examine the proportionality of penalty and therefore, the order passed by the learned Tribunal is well within jurisdiction, well within statutory powers cast upon it and therefore, no interference is to be made in exercise of extraordinary jurisdiction. Learned advocate for the respondent further submitted that on the contrary, there is grievance of the respondent workman that the learned Tribunal has not granted full back wages and therefore, the respondent workman was constrained to file separate petition. It was submitted by the learned advocate that it is settled position of law that once the order of penalty of dismissal is found to be invalid, as natural consequence full back wages ought to have been awarded. It was submitted that the learned Tribunal was left with no other alternate but to award full back wages, while passing the order of reinstatement, particularly, in view of the fact that there is no evidence led by the petitioner Administration that the respondent workman was gainfully employed elsewhere during the passage of time and therefore, while opposing the petition, the learned advocate for the respondent on the contrary requested the Court to set aside the order passed by the learned Tribunal in so far as it has not granted full back wages. Learned

advocate submitted that the alleged misconduct was not of that grave nature which would visit such gross penalty of dismissal and therefore, on the issue of proportionality also, learned Tribunal has rightly set aside the impugned order of dismissal and granted reinstatement to the respondent. Learned advocate submitted that it is settled position of law that once the Court has noticed the fact that there is violation of the provisions contained under Section 25 F, G and H of the Industrial Disputes Act, there is no alternate left with the Tribunal but to award 100% back wages. Learned advocate for the respondent workman further contended that on earlier occasion, while disposing of the Original Application, the learned Tribunal directed the Appellate Authority for rehearing of the an Appeal of the respondent workman and thereby set aside the original order and it was also directed that the Authority while dealing with the Appeal pursuant to the remand and rehearing of the grounds which are taken in the Appeal memo and disposed of the same in accordance with the Rules. This order is not observed by the petitioner Administration as according to the learned advocate, no hearing was given to the respondent workman and straightway the Appeal came to be decided and the learned advocate therefore, submitted that this is nothing but a sheer eye-wash to the original direction issued by the Central Administrative Tribunal in an order dated 27.4.1993. In that view of the matter, learned advocate requested to dismiss the petition filed by the petitioner Administration and consequently, grant the relief as prayed for in the petition filed by the respondent workman namely Special Civil Application No.18941 of 2005. While submitting this, learned advocate for the respondent relied upon few decisions delivered by the Hon'ble Apex Court in the cases of Jasmer Singh v. State of Haryana & Anr., reported in 2015 Law Suit (SC) 32; Rajasthan Lalit Kala Academy v. Radhey Shyam, reported in 2008 Law Suit (SC) 2049; and Rajkumar v. Director of Education & Ors., reported in 2016 Law Suit (SC) 333 and by drawing attention of this Court to the aforesaid decisions, learned advocate for the respondent requested to dismiss the petition filed by the petitioner and grant relief as prayed for by the respondent workman of the aforesaid petition. It is in this background of the fact, the Court is called upon to deal with and decide the validity of the order passed by the learned Tribunal in Reference (I.T.C.) No.16 of 1996. No further contentions are raised by the learned advocate for the respondent.

10. Having heard the learned advocates for the respective parties and having gone through the material on record, prima facie, it appears that the respondent workman has not challenged the validity of the inquiry proceedings as specific purshis came to be given vide Exhibit 16. Therefore, it emerges that the departmental inquiry, which has been conducted against the respondent, was in accordance with procedure established under Rule and therefore, there is no irregularity of any to be presumed on undisputed fact and in the background of this fact what deserves to be considered is the penalty aspect visits to the respondent. From the record, the deposition and the evidence led before the learned Industrial Tribunal, the fact that the respondent was involved in the theft

case at the time, when he entered into employment with the petitioner Administration. It was also the allegation that he misbehaved with the Senior Officer Mr. S.N. Chauhan and the same allegations, which were part of the departmental inquiry against the respondent workman. According to the petitioner, these charges have been proved during the course of inquiry and the inquiry was conducted in consonance with the Rules and procedure established by the petitioner Administration. The letter written by the respondent dated 9.9.1987 which is part of the departmental inquiry appears to have also been dealt with and after granting an adequate opportunity of hearing, the order of dismissal upon conclusion of the departmental inquiry came to be passed and this order appears to have been approved after considering every aspects of the matter, on 24.5.1993. It is also emerging from the record that against that order, in first point of time, after exhausting Appeal as well as revision/review remedies, the respondent workman approached the Central Administrative Tribunal by way of Original Application No.144 of 1989. It appears from the record that Central Administrative Tribunal came to the conclusion that some of the relevant issue raised by the respondent in his Appeal having been dealt with which are reflected non application of mind and therefore, that short ground, after opportunity appears to have been given of rehearing of Appeal. It is also reflected from the records that after the said direction issued by the Central Administrative Tribunal, the Appellate Authority has reconsidered the Appeal and has passed fresh order on 24.5.1993 confirming the order of original penalty. It is in this background, now instead of approaching the route, which the respondent adopted of approaching the Central Administrative Tribunal as instead industrial dispute, which ultimately, referred to the Industrial Tribunal. It is also borne out from the record that both the sides have led their respective oral as well as documentary evidence and have submitted their written submissions at Exhibit 37 and 38 respectively. It is after considering said overall materials on record and considering some of the decisions cited before it, the learned Tribunal has passed the order, which is impugned in the petitions. On the basis of overall appreciation of material on record, it is also emerged that the learned Tribunal has exercised power under Section 11-A of the Industrial Disputes Act and hence, arrived at the conclusion on the issue of proportionality of penalty and therefore, essentially, the Court is called upon in present proceedings where Section 11-A appears to have been exercised with due care and caution and justifiable in nature or not by learned Presiding Officer, Industrial Tribunal.

11. To examine the scope of Section 11 A, this Court refers to the said statutory provisions contained under Section 11-A which is reproduced hereinafter.

"Section 11-A : Power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen - Where an industrial dispute relating to the discharge or dismissal of workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal

was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Provided that in any proceedings under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

12. From the above statutory provisions under Section 11-A of the Industrial Disputes Act, 1947 (for short "The Act"), Learned Labour Court are conferred with the power purely discretionary in nature. Said power entrusted by statute is to be exercised in a just and proper manner and not in a routine manner. The background of the workman, magnitude of the offence/charge and process of the departmental inquiry, every aspect is to be considered by the Labour Court while exercising the jurisdiction under Section 11-A of the Act and therefore, this power is not an uncontrolled power that simply it is found that the harsh order of dismissal is passed in a routine manner, the Court is to exercise power under Section 11-A of the Act. The proportionality and quantum of penalty is to be viewed from the magnitude of a charge and therefore, a care and caution is to be maintained by the Court or the Tribunal while exercising jurisdiction under Section 11-A of the Act.

13. In the case reported in the case of Nicholas Piramal India Ltd. v. Harisingh, reported in 2015 (8) SCC 272, a reference is made to a parallel provisions equivalent to Section 11-A of the Act. In the said particular case, the Hon''ble Supreme Court in paras 32 to 33 has observed like this:

"32. Having regard to the nature of judicial review power conferred upon the High Court, it has rightly accepted the impugned award passed by the Labour Court which is affirmed by the appellate court by recording valid and cogent reasons in the impugned award / judgment. The same can neither be termed as erroneous nor error in law.

33. The workman's wilful disobedience of lawful or reasonable order under Clause 12(1)(d) of the SSO and the wilful slowing down of the work performance by him has been held to be partially proved. Therefore, the Labour Court has imposed a lesser punishment as against the order of dismissal in exercise of its original jurisdiction and power under Section 107 of the MPID Act as the disciplinary authority has failed to give any valid reasons for not imposing any one of the lesser punishments as provided under Clauses 12(3)(b)(i) to (v) of the SSO. Hence, the denial of 50% back wages to the workman by the Labour Court is itself a punishment imposed upon the workman as held by this Court in Jitendra Singh Rathor, upon which reliance has been rightly placed by the learned counsel for the respondent workman."

14. From the aforesaid position and proposition, this Court is of the opinion that

the petitioner Administration has inflicted penalty which has no proportionality with the magnitude of the charge and the Labour Court has rightly exercised the power keeping in view the material on record available and therefore, at one point of time, though it appears that there is a suppression of theft case by the respondent workman at the time when he has secured employment but the charge for which he has been proceeded departmentally was not of such a grave nature whereby the respondent workman is to be visited with such penalty. Of course, penalty could have been issued, but the Labour Court based upon evidence on record and material at his command has passed an order and therefore, keeping in view, the extraordinary jurisdiction of this Court, even if other view is possible, in absence of any perversity of material in nature, no interference is to be made by this Court.

15. The scope of interference by this Court under Article 226 and 227 of the Constitution of India is such well defined that even if another view is possible, the same cannot be substituted, moment the authority or the Court below has arrived at a particular conclusion based upon the material on record which led before it. The finding of the fact in a routine manner is not to be interfered with in exercise of extraordinary jurisdiction of this Court as held by series of decisions, this Court is unable to dislodge the findings arrived at by the Court below, more particularly, it is not so perverse, which may compel this Court to interfere with looking to the scope of interference as held by the series of decisions. The Court is taking in aid following decision which has propounded that the High Court under the guise of exercise of extraordinary jurisdiction cannot convert itself into Court of Appeal or fact finding authority. Of course the power or jurisdiction is not completely taken out but to exercise such power or jurisdiction, the material must be substantiated to arrive at the conclusion that finding is perverse and in ordinary course of manner, it can be assumed that it is illegal. This Court is not finding such kind of eventuality in the background of the case on hand and therefore, is not inclined to interfere with in exercise of extraordinary jurisdiction. In the case of *Pepsico India Holdings Private Ltd. v. Krishna Kant Pandey*, reported in (2015) 4 SCC 270, after considering several decisions, has spelt out in para 14 to 16 and thereby the Hon"ble Apex Court has arrived at the conclusion that the High Court has committed grave error in taking different view. The following extracts paras are reproduced herein below:

"14. While discussing the power of the High Court under Articles 226 and 227 of the Constitution interfering with the facts recorded by the courts or the tribunal, this Court in *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*, held as under: SCC pp.458 ? 59, para 17.

"17. In case of finding of facts, the Court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 covert itself into a court of appeal

when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and re-appreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at AIR p.1301 of the Report as follows : (SCC p.864, para 7)

"7. The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court ? It is well settled by the decision of this Court in Waryam Singh v. Amarnath, AIR p.217, para 14 that the "power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J. In Dalmia Jain Airways Ltd. v. Sukumar Mukherjee, to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors."

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bora v. Commr. of Hills Division and it was pointed out by Sinha, J. as he then was, speaking on behalf of the Court in that case : (AIR p.413, para 30) "30. ? It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi ? judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.""

15. In Birla Corpn. Ltd. v. Rajeshwar Mahato, the question of validity of termination of services of the respondent by the appellant Corporation was referred to the Industrial Tribunal. On evidence, the Industrial Tribunal found that the duties of the respondent were mainly managerial or administrative. The Tribunal held that the respondent was not a workman and the reference was therefore not maintainable against the decision of the Tribunal. The High Court relying on Section 2(s) (iv) (as amended in West Bengal) held that as the respondent was drawing salary less than Rs.1600 per month, he had to be regarded as a workman. The Corporation moved this Court against the order of the High Court. This Court while setting aside the decision of the High Court held as under : (SCC pp.612-14, paras 4 &11-12)

"4. It was not in dispute that at the time of the termination of services of Respondent 1, he was receiving Rs.1185 per month by way of salary. The Tribunal recorded the evidence as well as took into consideration documentary evidence which was produced by the parties. On the basis of the evidence which was adduced before it, the Tribunal observed that:

"The main duties of Shri Rajeshwar Mahato were both supervisory and administrative in nature.

In the instant case, Shri Mahato's functions were mainly of a managerial nature. He had control as well as supervision over the work of the jute mill workers working under him.?

11. As we have also noticed herein above, the Tribunal had given a categorical finding to the effect that Respondent 1's function was mainly of managerial nature. His duties were both supervisory and administrative and therefore he was regarded as not being a workman. Though the Tribunal did not specifically state so, it is evident that it is because of Section 2(s)(iii) that Respondent 1 was regarded as not being a workman.

12. Neither the Single Judge nor the Division Bench of the High Court, as we have already noticed, referred to this aspect of the matter. Even assuming that the West Bengal amendment was applicable, that would still not help to hold Respondent 1 as a workman if the finding of the Tribunal with regard to the nature of the duties performed by him, as arrived at by the Tribunal, is not set aside as being frivolous or without any evidence. As long as the finding of the Tribunal stands, namely, that the respondent was an employee mainly in a managerial or administrative capacity, the award of the Tribunal could not have been set aside. As we have already observed the Single Judge or even the Division Bench could have come to the conclusion that the finding so arrived at by the Tribunal was either frivolous or not based on any evidence. But this aspect of the case was completely overlooked by the High Court. The emphasis of the Single Judge as well as the Division Bench was only with regard to applicability of the amendment of the State of West Bengal to Section 2(s) of the Industrial Disputes Act. In our opinion, therefore, the High Court erred in allowing on this ground the writ petition filed by Respondent 1. The decision of the High Court is set aside and the writ petition filed therein by the respondent stands dismissed."

16. In *Indian Overseas Bank v. Staff Canteen Workers' Union*, this Court considered a similar question with regard to the power of the High Court under Article 226 against the findings recorded by the Industrial Tribunal. Reversing the decision of the Single Judge and restoring the fact-finding decision of the Tribunal, this Court held : (SCC pp.259-60, para 17)

"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The Division Bench was not only

justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

16. In another decision delivered in the case of *Kalpesh Hemantbhai Shah v. Manhar Auto Stores Through its Partner and Ors.*, reported in (2014) 15 SCC 711, wherein the Hon'ble Apex Court has concluded that the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India is a limited scope of jurisdiction and when there is a mixed question of law and fact is involved, the High Court can interfere provided the conclusion arrived at by the Authority below based upon wrong interpretation and error committed must have been apparent on the evidence of record. The relevant paras which are worth to be taken note of are paras 8 to 10 for the benefit of the Court to arrive at just decision, which are reproduced hereinafter:

"8. The question about maintainability of a writ petition under Article 226 read with Article 227 of the Constitution of India against a finding of fact was considered by this Court in *Mohd. Shafi v. Additional District and Sessions Judge (VII), Allahabad and others*, (1977) 2 SCC 226 : AIR 1977 SC 836. In the said case this Court held that in the case of mixed question of law and fact if the High Court found that on a wrong interpretation of the explanation the matter has been decided, the High Court can correct the error and set aside the conclusion reached by the Subordinate Court.

9. It is well settled that the High Court under Article 227 of the Constitution of India has jurisdiction to correct the error if apparent on the face of the record. But in the present case the respondents failed to bring on record as to what was the error committed by the District Judge in deciding the appeal. The claim of the appellant to use the premises for personal necessity is a question of fact which was decided by the District Judge on appreciation of evidence. There was no mixed question of law and fact involved in the case, much less question of law. The comparative hardship of tenant and landlord is a question of fact. In absence of any question of law involved with such facts, the High Court cannot alter such finding under Articles 226 and 227 of the Constitution of India.

10. In view of the aforesaid finding, we hold that the High Court had no

jurisdiction under Articles 226 and 227 of the Constitution of India to interfere with or alter a finding of fact arrived at by an Appellate Court deciding the question of personal necessity of a landlord in a landlord-tenant dispute. For the reason aforesaid, the judgment passed by the High Court cannot be upheld. We, accordingly, set aside the impugned judgment and decree dated 23rd February, 2010 and 1st October, 2010, passed by the High Court and restore the order passed by the Appellate Court. The appeals are allowed."

17. In another decision in the case of K.V.S. Ram v. Bangalore Metropolitan Transport Corporation, reported (2015) 12 SCC 39, again the Hon"ble Apex Court has taken note of scope of exercise of power under Article 226 and 227 of the Constitution of India, has held that unless there is patent perversity in the orders of the Tribunal and Courts subordinate to it, where there is gross and manifest failure of justice or principles of natural justice have been flouted, only in those case, jurisdiction can be exercised and therefore also, the High Court committed an error of ignoring the parameters. Again reference is worth to be taken note of relevant paras 10 to 14 of the said decision which are reproduced herein below :

"10. In the Writ Petition, while setting aside the award of the Labour Court, learned single Judge placed reliance upon the judgment of this Court passed in the case of Punjab Water Supply Sewerage Board and Anr. v. Ramsajivan and Anr., reported in 2007 (2) SCC (LandS) 668 : (2007) 9 SCC 86: AIR 2007 SC (Supp) 243 and also another judgment of the High Court and observed that a person who practices fraud for securing employment cannot perpetuate on the ground of delay and the learned single Judge faulted the Labour Court for exercising discretion under Section 11A of the Industrial Disputes Act and interfering with the punishment of dismissal from service. In our considered view, in exercise of its power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the Tribunal, only, when there has been a patent perversity in the orders of tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted. In our view, when the Labour Court has exercised its discretion keeping in view the facts of the case and the cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court.

11. In Syed Yakoob v. K.S. Radha-krishnan, AIR 1964 SC 477, the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939. Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479-80, para 7)

"7.A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where

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

(Emphasis supplied)

12. In the case of *Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Company Ltd. and Anr.*, (2014) 6 SCC 434 : AIR 2014 SC (Supp) 562, it was held as under:-

"15. We find the judgment and award of the labour court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the labour court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

16. It is relevant to mention that in *Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329 : 2010 AIR SCW 6387 with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that: (SCC p. 348)

"49. (m) The power of interference under [Article 227] is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court."

It was also held that: (SCC p. 347, para 49)

"49. (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it."

13. Emphasizing that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution of India, Courts are to keep in view the goals set out in the Preamble and in Part IV of the Constitution while construing social welfare legislations, in *Harjinder Singh v. Punjab State Warehousing Corporation*, (2010) 3 SCC 192 : AIR 2010 SC 1116, this Court has held as under:

"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10.The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.

State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923 at page 928 para 10)".

14. Once the Labour Court has exercised the discretion judicially, the High Court can interfere with the award, only if it is satisfied that the award of the Labour Court is vitiated by any fundamental flaws. We do not find that the award passed by the Labour Court suffers from any such flaws. While interfering with the award of the Labour Court, the High Court did not keep in view the parameters laid

down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution of India and the impugned judgment cannot be sustained. "

18. To summarise reverting back the facts of the present case, the conclusion arrived at by the Court below is that the respondent workman is not completely knowing the Gujarati language and except putting signature, there is any barrier with the respondent workman. It is also found that the learned Presiding Officer of the Industrial Tribunal that the Inquiry Officer has arrived at conclusion which is reflected in the report and that conclusion is on the mere signature of the respondent workman. There is no consideration to the specific applications given by the respondent workman dated 18.9.1987 and 9.5.1987 and just in a predetermined manner, an inquiry proceeded against an illiterate person and therefore, findings having been found by the learned Presiding Officer, as informed to visit the penalty are perverse. It was also found by the learned Presiding Officer, Industrial Tribunal that the Authority proceeded simply on the basis of confession made by the respondent workman, but whether it was just and proper or not, is the subject matter of examination executed by the Authority in application dated 18.9.1997, which is merely signed by the respondent workman, who does not know Gujarati language and is relied upon for inflicting penalty upon him and therefore, in absence of any cogent and speaking order, about guilt of the charge, penalty of dismissal and economic death is not found justifiable by the learned Presiding Officer, which in the opinion of this Court is proper exercise of power. Learned Presiding Officer with due application of mind appears to have minutely examined the entire relevant record of inquiry based upon which the order of penalty came to be passed and further on the basis of material of that inquiry, the Court below has arrived at the conclusion that the dismissal may not be a proper and just penalty proportionate to the gravity of the charge and therefore, such conclusion which has been arrived at in exercise of jurisdiction does not call for interference by this Court, more particularly, in exercise of extraordinary jurisdiction as stated herein above, well reasoned order is passed by the learned Presiding Officer, Industrial Tribunal is not required to be set at naught, in opinion of this Court and therefore, it is not proper for this Court to opine contrary.

19. So far as other aspect and grievance about granting of opportunity of hearing pursuant to the order passed by the Central Administrative Tribunal in Original Application No.144 of 1989 is concerned, this Court is of the opinion that such plea raised by the respondent workman has no strong support if on perusal of the order passed by the Central Administrative Tribunal, the directions contained in last para of the order is on the contrary suggesting that there was no desirous opinion of giving personal hearing but the Appellate Authority was directed to reconsider and rehear the appeal. Meaning thereby, the contentions raised before the Appellate Authority by respondent workman deserves to be reconsidered. It is settled position of law that the concept of hearing is by now drastically changed which has been propounded in the recent decision delivered by the

Hon"ble Apex Court in case of Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise Gauhati & ors., reported in 2015 (8) SCC 519, wherein it has been held that principle of opportunity is not be treated as un-ruled horse. In a given case, if after giving an opportunity of hearing, if circumstance or conclusion is not possible to be altered than such empty formality does not desirous to be provided and therefore, keeping that proposition in mind, this Court is of the opinion that issue raised by the respondent workman is not that much cogent enough to dislodged finding of the learned Presiding Officer. It is in this background of the fact that when just and proper order appears to have been passed keeping in view the interest and balance of both the sides, this Court is of the opinion that the case on hand is not a case which warrants any interference in exercise of extraordinary jurisdiction and therefore, the order passed by the learned Presiding Officer, Industrial Tribunal in Reference (I.T.C.) No.16 of 1996 dated 17.3.2004 is not to be interfered and hence, the petition presented by the petitioner Administration is dismissed hereby.

20. Since the common order is passed, this Court is now taking the grievance voiced out by the respondent workman in the cognate matter, which is filed subsequent in point of time as a counter petition to the petition filed by the petitioner Administration essentially on the ground that once the reinstatement is passed, 100% back wages ought to have awarded. Now to consider that if we go through the reasons assigned by the learned Presiding Officer, the same are not considered to such fallible, which may permit this Court to grant 100% back wages. As stated earlier, there appears to be a limited scope of interference in Article 226 and 227 of the Constitution of India, this Court is unable to dislodge the findings otherwise the workman is also not appearing to be so innocent, as it seems from the record that, he may be given a cake walk. On the contrary, the Authority has stated that he must be visited with some penalty, of course not that of dismissal, but it is reflected from records that he has suppressed the fact of criminal case in which serious charge of theft was entangled and further there are specific finding of the learned Presiding Officer in the course of inquiry that the charge levelled against the workman is proved. Of course, it is a different matter that power under Section 11-A of the Act, to be exercised by the Tribunal, but the factum of charge have proved during the course of inquiry, at least in the opinion of this Court, he must be deprived of the full benefits and therefore, order passed by the learned Presiding Officer to that extent is just whereby 50% back wages having been awarded. In the opinion of this Court, the order passed by the learned Presiding Officer does not call for any interference and this material fact to be taken note of that there is specific purshis given by the respondent workman whereby the validity of the inquiry has not been questioned and therefore, the order passed by the Tribunal is in consonance with the duty discharge to its statutory discretion and same is not required to be interfered with. Therefore, looking to overall set of circumstance, this Court is of the opinion that the order passed by the learned Presiding Officer is not required to be interfered with. The case law relied upon by the learned advocate for the

respondent workman are in different set of circumstance qua the case on hand and therefore, same are not of avail. It is settled law that if slight change in facts, it would make world of difference in applying precedent. Therefore, in the background of fact of those particular case, are quite distinct from the fact of the case on hand and therefore, this Court is of the opinion that the petition presented by the workman being devoid of merits and same deserves to be dismissed.

21. Another aspect cannot be ignored that the workman has presented the petition subsequent to the petition filed by the petitioner Administration and this conduct of the part of respondent workman is an afterthought measure and therefore, this Court is of the opinion that order of reinstatement that 50% back wages only which is passed in discretion exercised by the learned Presiding Officer extraordinary jurisdiction of this Court does not warrant or permit the Court to quash the said order and therefore, petition deserves to be dismissed. Accordingly, both the petitions are disposed in view of aforesaid terms. Rule discharged. Ad interim relief granted earlier, if any, stands vacated forthwith. No order as to costs.