

(2006) 03 GUJ CK 0002

In the Gujarat High Court

Case No : Letters Patent Appeal No. 513 of 1999 in Special Civil Application No. 1026 of 1999 with Civil Application No. 3522 of 1999

Guj. State Road Transport Corporation

APPELLANT

Vs

D.V. Chauhan

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 78(1), 79
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(1), 11A, 15, 2
Motor Vehicles Act, 1939 — Section 64A

Citation : (2006) 111 FLR 1097 : (2006) 2 GLR 889 : (2006) 3 LLJ 196

Hon'ble Judges : Bhawani Singh, C.J.;H.K. Rathod, J;Abhilasha Kumari, J

Bench : Full Bench

Advocate : Hardik C. Rawal, P.H. Pathak and D.S. Vasavada, for the Appellant;
Mukul Sinha and Prabhakar Upadhyay, for the Respondent

Judgement

Bhawani Singh, C.J.—Shri D.V.Chauhan (respondent) was a Conductor at Bardoli Depot of Gujarat State Road Transport Corporation (Corporation for short). On 3.5.1990, his duty was on Surat " Mandvi road. When the bus reached between Karanj and Mandvi, checking squad of Corporation checked the bus. At this time, there were 74 passengers in the bus. It was found that he had collected Rs. 14/- from two passengers and had issued used tickets worth Rs. 6/- with an intention to misappropriate public money. It was also found that to two passengers who were travelling from Surat to Archana, he issued tickets worth Rs. 12/- out of which, tickets worth Rs. 6/- were re-used. To a passenger, who was travelling from Kim Char Rasta to Amalsadhi, after collecting the fare of Rs. 4/-, he issued ticket worth Rs. 6/- which was used in the earlier trip. Some other irregularities were also found during the checking. Therefore, he was found having misappropriated Rs. 28/- by issuing used tickets to six passengers. There was cash balance of Rs. 41-40. Consequently, he was chargesheeted on 9.5.1990 to which, he replied on 7.6.1990. Thereafter, departmental inquiry was held. He

submitted reply and inquiry proceeded on 26.6.1990 and 27.6.1990. On 7.7.1990, show cause notice was issued. He filed reply to the show cause notice on 12.7.1990. Ultimately, the competent authority passed order on 30.7.1990 reducing the respondent by 16 stages, and fixing him at Rs. 775/-.

Industrial dispute was raised. Industrial Tribunal, by order dated 15.9.1998, reduced punishment from 16 stages to 5 stages. This order has been passed in exercise of power u/s 11A of the Industrial Disputes Act, 1947 (the Act). This order was challenged through Special Civil Application No. 1026 of 1999 by Corporation. However, by oral order dated 11.2.1999, Special Civil Application was dismissed. The oral order reads:

Having heard learned counsel for the petitioner and looking to the nature of the case, I am not inclined to invoke extra-ordinary jurisdiction to interfere with the impugned award passed by the Tribunal. Petition is dismissed.

Above quoted order in Special Civil Application No. 1026 of 1999 is challenged through Letters Patent Appeal No. 513 of 1999 by the Corporation. While hearing the matter, the Division Bench (Coram: R.S. Garg & Ravi R. Tripathi, JJ) passed the following order on 10.8.2005:

1. Present is a matter where the departmental authorities imposed punishment of lowering down the appellant to 16 stages below the existing pay scale, but the Industrial Tribunal interfering in the matter in exercise of its powers u/s 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) had reduced the punishment from 16 stages to 5 stages only. The learned Single Judge refused to interfere in the matter observing that looking to the nature of the case no interference was called for.

2. Mr. Hardik C. Rawal, learned counsel for the appellant placing his reliance upon a Division Bench judgement dated 29.03.2005 of this Court in Letters Patent Appeal No. 1199 of 2002 submits that powers vested in the Labour Court/ Industrial Tribunal u/s 11A of the Act can be exercised only in cases which relate to discharge or dismissal of a workman and not otherwise. On the other hand Mr. Prabhakar Upadhyay, learned counsel for the workman placing his reliance upon yet another Division bench judgement of this Court in the matter of Municipal Commissioner Vs. Sanatkumar D. Brahmbhatt, submits that when a reference is made to the Labour Court/ Industrial Court, then the whole issue is writ large before the said Court/ Tribunal and de hors Section 11A of the Act, legality and propriety of the punishment will have to be examined by the Industrial Tribunal while adjudicating this dispute which was referred for adjudication.

3. After going through both the judgements we are of the considered opinion that there is a sharp conflict in the said two judgements. We are of the opinion that the matter deserves to be considered by a Larger Bench of this Court to bring at rest the controversy once for all. Let the matter be placed before the Honourable Chief Justice for referring the matter to a Larger Bench on the simple question that which of the judgements decides the law correctly.

2. Before proceeding further, material facts of Vankar R.R. v. Gujarat State Road Transport Corporation Letters Patent Appeal No. 1199 of 2002 : 2005(3) LLJ 239 decided by Division Bench (Coram: G.S. Singhvi & Anant S. Dave, JJ.) on 29.3.2005, referred in paragraph-2 of the order dated 10.8.2005 in L.P.A. No. 513 of 1999 be stated.

Shri R.R. Vankar (appellant) was conductor with the Corporation. On being checked by line checking squad on 3.10.1995, it was found that while he was on duty on Chhota-Udaipur " Kanavat route, he took money from three passengers but did not issue tickets. On receipt of report from checking squad, departmental inquiry was initiated against him. He was found guilty. Thereafter, Divisional Traffic Superintendent (City)-cum-Competent Authority issued notice proposing dismissal from service. Appellant pleaded that allegation against him was not correct. He could not collect fare from the passengers because they were in a state of intoxication. However, after considering the reply, penalty of reduction to the basic of pay-scale was imposed. This order, he challenged before the Industrial Tribunal through Gujarat Kamdar Sewa Sangathan, Vadodara. The competent authority having made reference u/s 10(1)(c) of the Act (Reference No. 109 of 1999), the Industrial Court quashed the order of punishment by award dated 20.2.2001 invoking Section 11A of the Act. This order was challenged through Special Civil Application No. 1081 of 2002 by the Corporation successfully. Consequently, the Award was set aside on the ground that the Industrial Court did not have jurisdiction to interfere with the punishment imposed by the disciplinary authority. The appellant challenged this order through Letters Patent Appeal No. 1199 of 2002. The Division Bench found that Industrial Court invoked Section 11A of the Act for setting aside the punishment imposed by the disciplinary authority, therefore, after quoting Section 11A of the Act, recorded that:

...A reading of the plain language of the above reproduced provision makes it clear that Labour Court, Tribunal and National Tribunal can interfere with the punishment imposed by the employer only in the cases of discharge or dismissal. The use of the expression relating to the discharge, or dismissal of a workman clearly shows that the Legislature intended to confer the appellate jurisdiction upon the Labour Court, Tribunal and National Tribunal only in the matters involving discharge or dismissal of a workman. To put it differently, the Labour Court etc. cannot exercise power u/s 11A of the Act in the cases in which the employer imposes a penalty on the workman otherwise than by way of discharge or dismissal. In this view of the matter it must be held that by interfering with the punishment of reduction to the basic of his pay-scale imposed on the appellant, the Industrial Court had exceeded its jurisdiction and the learned single Judge rightly quashed the award passed by it.

6. Notwithstanding the aforementioned conclusion, we have scanned through the entire record for a purpose of finding out, whether the proceedings of inquiry are vitiated due to violation of rules of natural justice or that the punishment

imposed by the employer is arbitrary. It is not in dispute that the order of punishment was preceded by issuance of charge-sheet to the appellant containing allegation that he had misappropriated the amount of fare collected from three passengers. The Enquiry Officer, after recording evidence of the parties returned the finding that the charge levelled against the appellant has been proved. Thereafter, the Disciplinary Authority issued show cause notice. The appellant filed reply. This was followed by the order of punishment. The Industrial Court did not find any infirmity in the proceedings of the enquiry. Therefore, it is not possible to hold that the enquiry held against the appellant was vitiated due to violation of rules of natural justice and, on that account, the award of the Industrial Court should be sustained.

7. We also agree with the learned single Judge that in such like matters the Labour Court/ Industrial Tribunal should be loath to interfere with the discretion exercised by the employer in the matter of imposition of punishment....

3. Contra, in *Municipal Commissioner Vs. Sanatkumar D. Brahmbhatt*, facts were that respondent was an Octroi Clerk. Allegation against him was that he had allowed a truck to pass without collecting octroi. On account of this incident, three charges were levelled against him. In departmental inquiry, it was found that out of the three charges, first charge was mostly proved, second charge was not wholly proved but he was found to be negligent and the third charge was not proved. Ultimately, punishment of stoppage of three yearly increments with future effect was imposed by the disciplinary authority. Respondent raised an industrial dispute to the effect whether punishment of stoppage of three yearly increments should be vacated and whether the deducted amount should be refunded to the workman or not. This dispute was decided by the Industrial Tribunal which reached to conclusion that looking to the charges which were proved, punishment of stoppage of three yearly increments with future effect would be too harsh. Consequently, punishment of stoppage of one yearly increment without future effect was substituted. Examining the matter in the context of Section 11A, the Court said in paragraph-4 that:

4. The learned Advocate for the petitioner was right when he contended that on the express language of Section 11A of the Act, such controversy could not be covered by the said provision as such provision relates to only discharge or dismissal of a workman. However, on the facts of the present case, the very dispute which is referred to the Industrial Tribunal for adjudication centres round the legality and propriety of the imposition of punishment of stoppage of three yearly increments with future effect. Once that dispute is referred for adjudication, the Industrial Tribunal in exercise of its power u/s 11A was bound to adjudicate upon that dispute and pronounce upon it. The term 'industrial dispute' is defined by Section 2(k) to mean any dispute or difference between employers and employers or between employers and workmen. It cannot be gainsaid that there is difference or dispute between the employer and employee in connection with the punishment imposed on the workman. Therefore, de hors

Section 11A, the legality and impropriety of the punishment had to be examined by the Industrial Tribunal while adjudicating this very dispute which was referred for adjudication. Consequently, when the Industrial Tribunal considered the gravity of the punishment in the light of the charges having been held proved, it cannot be said that it was exercising jurisdiction not vested in it. In fact, it was its obligation to adjudicate this very dispute which was referred for adjudication.

4. Confronted with these two judgements, namely, *Municipal Commissioner, Baroda v. Sanatkumar D. Brahmhatt* (supra) and *Vankar R.R. v. Gujarat State Road Transport Corporation* (supra), the Division Bench (Coram: R.S.Garg & Ravi R. Tripathi, JJ.) was of the opinion that:

...After going through both the judgements we are of the considered opinion that there is a sharp conflict in the said two judgements. We are of the opinion that the matter deserves to be considered by a Larger Bench of this Court to bring at rest the controversy once for all. Let the matter be placed before the Honourable Chief Justice for referring the matter to a Larger Bench on the simple question that which of the judgements decides the law correctly.

5. Therefore, this matter comes for consideration by Full Bench.

6. Shri Hardik Rawal, learned counsel for the appellant, contended that u/s 11A of the Act, the Tribunal/ National Tribunal can interfere with the punishment imposed by the employer only in cases of discharge or dismissal, therefore, where punishment imposed is other than discharge or dismissal, power u/s 11A of the Act cannot be exercised. In other words, Section 11A governs those cases which pertain to discharge or dismissal and other punishment cases would continue to be governed by old law of non interference with finding of guilt and punishment awarded by the management, not to act as an appellate Court.

Dr. Mukul Sinha with Shri Prabhakar Upadhyay, learned counsel for respondent and M/s. P.H. Pathak & D.S. Vasavada, the intervenors, contend that Labour Court/ Tribunal are competent to examine cases of all kinds of punishment including those of discharge or dismissal. Incorporation of Section 11A simply separates cases of discharge or dismissal. Dispute with regard to all kinds of punishments is referable to Labour Court/ Tribunal u/s 10 of the Act. The propriety or legality of the order can be examined under the Second Schedule and the Third Schedule to the Act. Therefore, insertion of Section 11A in the Act should not make difference. Therefore, after Reference is made u/s 10 of the Act, Labour Court/ Tribunal should exercise power vested in it by law.

7. Advancing respective submissions, decisions, namely, *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, *Ananda Bazar Patrika (P) Ltd. Vs. Its Workmen*, , *Bengal Bhatdee Coal Co. Ltd. v. Ram Probesh Singh and Ors.* AIR 1964 SC 486 , *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , *The East India Hotels Vs. Their Workmen and Others*, , *Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma*, , *Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others*, , *Christian*

Medical College Hospital Employees" Union and Another Vs. Christian Medical College Vellore Association and Others, , Gujarat State Road Transport Corporation v. Prabhashanker K. Acharya 1992(2) GLH 354 , Rajasthan State Road Transport Corporation Vs. Ram Karan Chauhan and Another, Gujarat State Road Transport Corporation v. Vitthalbhai R. Solanki 1997 III LLJ 1021 , Municipal Commissioner Vs. Sanatkumar D. Brahmbhatt, Adamji M. Badri and Others Vs. Labour Officer and Another, Vankar R.R. Vs. Gujarat State Road Transport Corporation, Babulal Nagar and Others Vs. Shree Synthetics Ltd. and Others, and Ahmedabad New Textile Mills v. Textile Labour Association and Anr. 1988(2) GLH 498 were brought to our notice by learned counsel for the parties.

7.1. Incorporation of Section 11A in the Act is the result of Apex Court decision in Indian Iron and Steel Company case (supra) and Recommendation No. 119 of International Labour Organization concerning the worker's right to challenge his termination before a neutral body. While examining the power of Labour Court/Tribunal, the Apex Court said in paragraph-18 that:

....Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however act as a Court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials, the finding is completely baseless or perverse....

7.2 In Ananda Bazar Patrika (P) Ltd. Case (supra), the Apex Court said in paragraph-8 that:

(8) The extent of the jurisdiction which a Labour Court or an Industrial Tribunal can exercise in dealing with such disputes is well settled. If the termination of an industrial employee's services has been preceded by a proper domestic enquiry which has been held in accordance with the rules of natural justice and the conclusions reached at the said enquiry are not perverse, the Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. If, on the other hand, in terminating the services of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for his trade union activities, the Tribunal would be entitled to give adequate protection to the employee by ordering his reinstatement, or directing in his favour the payment of compensation; but if the enquiry has been proper and the conduct of the management in dismissing the employee is no mala fide, then the Tribunal cannot interfere with the conclusions of the enquiry officer, or with the orders passed by the management after accepting the said conclusions.

Thereafter, the Court said in paragraph-15 that:

(15) The position, thus, is that the conclusion of the Labour Court that the enquiry was not fair and that the appellant has acted mala fide in discharging Mr. Sarkar cannot be sustained. We have repeatedly pointed out that though industrial adjudication can and must protect industrial employees from victimisation, a finding as to mala fides or victimisation should be drawn only where evidence has been led to justify it; such a finding should not be made either in a casual manner or light-heartedly. In our opinion, no material was produced before the Labour court in the present proceedings to justify its finding either that the enquiry was unfair, or that the conduct of the appellant in discharging Mr. Sarkar was mala fide.

7.3 In Bengal Bhatdee Coal Co. Ltd. case (supra), the Court said in paragraph-6 that:

(6) Now there is no doubt that though in a case of proved misconduct, normally the imposition of a penalty may be within the discretion of the management there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the nature of offence that the tribunal may be able to draw an inference of victimisation merely from the punishment inflicted....

(See also: National Tobacco Co. of India Ltd. and Others Vs. Fourth Industrial Tribunal and Others,

7.4 Again, in The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. case (supra), the Apex Court interpreted Section 11A of the Act quite exhaustively. Summarising the legal position preceding enactment of Section 11A, the Court said in paragraph-32 that:

32. From those decisions, the following principles broadly emerge:

1. The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
2. Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
3. When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.
4. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order, had to give an opportunity to the

employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

5. The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

6. The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

7. It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

8. An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

9. Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The Workmen*, within the judicial decision of a Labour Court or Tribunal.

Thereafter said in paragraphs-35, 36, 41 & 41-A:

35. We cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the

Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and, if so, whether there is a clear expression of that intention in the language of the section.

36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in *India Iron & Steel Co. Ltd case (supra)*, existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh so as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by Section 11A. The words *Sin the course of the adjudication proceeding*, the Tribunal is satisfied that the order of discharge or dismissal was not justified clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron & Steel Co. Ltd. case (supra)*, can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter.

...

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference u/s 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also

hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to re-appraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are not put on a par by Section 11A.

41-A Another change that has been effected by Section 11A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. u/s 11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11A.

Thereafter, in paragraph-50, the Court said:

50. The legislature in Section 11A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the Proviso. The Proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally

do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The `matter" in the Proviso refers to the order of discharge or dismissal that is being considered by the Tribunal.

Finally, the Court said in paragraph-65 that:

65. We have already expressed our view regarding the interpretation of Section 11A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognised certain managerial rights in an employer. We have pointed out that this position has now been changed by Section 11A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him....

7.5 In *East India Hotels v. Their Workmen and Ors.* (supra), the Apex Court said in paragraph-5 that:

5. This appeal is by special leave against the award of the Tribunal. It is not denied that the Tribunal was in error in applying Section 11A of the Act to this case, because the complaint, the enquiry, the report and the reference were all prior to the coming into operation of this Section on December 15, 1971. This Court held in *The Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. v. The Management and Ors.* that Section 11A has no retrospective operation as it not only deals with procedural matters, but also has the effect of altering the law laid down by this Court in this respect by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as with the punishment imposed by it. In the undoubted exercise of the right of the employer to take disciplinary action and to decide upon the quantum of punishment, both of which are part of the managerial functions, what has to be seen is whether the employer before imposing the punishment had conducted a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. When a proper enquiry has been held by an employer and the finding of misconduct has support from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified when the enquiry is unfair or the findings arrived

at the enquiry are perverse or have no basis in evidence or the management is guilty of victimisation, unfair labour practice or mala fide or the punishment is harsh and oppressive. The Tribunal cannot, therefore, re-appraise the evidence and arrive at a conclusion different from that arrived at by the domestic Tribunal. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra. Once misconduct is proved, either in the enquiry conducted by the employer or by the evidence placed before the Tribunal for the first time, the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is harsh and oppressive. This is not a case where no enquiry has been held, nor is it a case where either side had not adduced evidence before the Tribunal. What the Tribunal had to see is whether the enquiry is vitiated by any of the grounds referred to by us. Admittedly, no such grounds exist in this case. Nothing was stated as to in what respects the enquiry was defective. On the other hand, the Tribunal proceeded on the basis that the enquiry was not vitiated, but it had power u/s 11A to arrive at a different conclusion and award a different punishment. That apart, even the evidence justified the conclusion arrived at by the Enquiry Officer.

7.6 In *M.P. Electricity Board v. Jagdish Chandra Sharma* case (supra), the Apex Court said in paragraph-8 that:

8. The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction u/s 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In *U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others*, this Court, after referring to the scope of interference with punishment u/s 11A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment

was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another*, this Court after referring to the decision in *State of Rajasthan Vs. B.K. Meena and others*, also pointed out that the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-a-vis the establishment, interference with punishment of dismissal could not be justified. In *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*, this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court should not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt within detail in a recent decision of this Court in *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*, This Court summed up the position thus: (SCC p.141, para 20).

20. It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised u/s 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment.

It may also be noticed that in *Orissa Cement Ltd. v. Adikanda Sahu* (1960) I LLJ 518 (SC) and in *New Shorrock Mills Vs. Maheshbhai T. Rao*, this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated Spunishment of dismissal for using abusive language cannot be held to be disproportionate. If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in *Employers, Mgmt., M. Colliery, BCCL Ltd. Vs. Bihar Colliery Kamgar Union through Workmen*, this Court after referring to and quoting the relevant passages from *Krishnakali Tea Estate v. Akhil Bharatiya*

Chah Mazdoor Sangh and The Management of Tournamulla Estate Vs. Workmen,

The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority u/s 11A of the Act to interfere with the punishment of dismissal.

Thereafter, in paragraph-9, the Court said:

9. In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the workplace, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organization. Discipline at the workplace in an organisation like the employer herein, is the sine qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large.

Obviously this idea is more relevant in considering the working of an organisation like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organisation as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The industrial Court made the correct approach and came to the right conclusion.

7.7 In *Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy and Ors.* (supra), the Apex Court examined Section 11A, I.D. Act, and said in paragraph-14 that:

14. With respect, we are unable to agree with these findings of the High Court. In our opinion, there is no such thing as unlimited jurisdiction vested with any judicial or quasi-judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.

Thereafter, in paragraphs 17 & 18, the Court said:

17. The question the Labour Court ought to have asked itself while exercising its discretion u/s 11A should have been whether the reasons given by it that there was no earlier misconduct or that the respondent was an active participant in

cultural activities was sufficient to come to a reasonable conclusion that a punishment of dismissal was harsh, in the background of the finding recorded by itself as to the confidence of the employer in the respondent which, according to the Labour Court, was shaken by the misconduct.

18. In our opinion by no stretch of imagination either the extenuating circumstances recorded by the Labour Court or the exercise of its discretion could be termed either as reasonable or judicious. In our opinion even the learned Single Judge and the Division Bench erroneously held that the Labour Court had unlimited jurisdiction u/s 11A of the Act. It is because of the above erroneous legal foundation as to the vastness of power vested with the Labour Court that the High Court accepted the interference by the Labour Court in the award of punishment. Thus, the Labour Court as well as the High Court fell in error in granting the relief to the respondent which is challenged in this petition.

7.8 In *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, , the Apex Court said in paragraph-14 that:

Section 11A ... cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power u/s 11A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management u/s 11A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision.

7.9 In *Gujarat State Road Transport Corporation v. Prabhashanker K. Acharya* (supra) Chauhan, J. held that Section 11A only empowers the Labour Court or the Tribunal to interfere with the punishment of discharge or dismissal. It does not specifically refer to any other kind of punishment. It is empowered to interfere with these punishments on being satisfied that the punishment was not justified in that case and direct reinstatement on such terms and conditions it may think fit. It may, in such cases, grant other relief including lesser punishment. Since these two punishments are referred in this Section, it cannot be construed that it empowers and vests jurisdiction to interfere with other punishments imposed by the management. The Legislature was aware of the Apex Court decisions with regard to restricted jurisdiction and powers of the Labour Court or Industrial Tribunal, even then, it did not vest the jurisdiction or empower the Labour Court or Industrial Court to interfere with or substitute other kind of punishments. Legislature could include other punishments in Section 11A besides punishment of discharge or dismissal. Intention of Legislature is to restrict the power of management in punishments of discharge or dismissal by making provision in Section 11A. Even though it has wider power than revisional powers, it cannot exercise powers of appellate authority, reappraise the evidence and set aside the finding only because other view is possible or even plausible, nor can it interfere with the nature or quantum of

punishment casually because it considers to impose other kind of punishment or to impose lesser punishment than the one awarded by the management. The jurisdiction is limited by various judicial pronouncements in the following circumstances:

- (1) want of good faith
- (2) victimization or unfair labour practice.
- (3) basic error or violation of principles of natural justice.
- (4) finding completely baseless or perverse.
- (5) colourable exercise of power or want of bona fide, and
- (6) punishment shockingly disproportionate regard being had to the particular conduct or the past record or is such that no reasonable employer would even impose in like circumstances unless he is actuated by considerations of victimization or unfair labour practice.

Making clear that these circumstances are illustrative and not exhaustive, it is observed that the Tribunal can interfere with the finding or punishment in circumstance alike also, but cannot interfere with the finding on nature and quantum of punishment casually or as if exercising appellate jurisdiction. Contention that the Tribunal has no jurisdiction at all to interfere with the order in the inquiry in which the punishment other than that of discharge or dismissal is imposed has not been accepted. Contention that Section 11A of the Act provides interference with the order in which punishment of discharge or dismissal is imposed, which means, Tribunal cannot interfere with any other order in which punishment is imposed, has been rejected on the ground that there is no provision under the Act prohibiting the Tribunal in exercising jurisdiction except in case of punishment of discharge or dismissal. On examination of Sections 7, 7A and 15 and the Schedule, it was evident that the Tribunal has jurisdiction even to interfere with the order imposing punishment other than that of discharge or dismissal, holds the learned Judge. Even otherwise, prior to incorporation of Section 11A of the Act, jurisdiction of Tribunal to interfere with the order of punishment is recognized and accepted by Courts in circumstances pointed out.

Ahmadi, J. (as he then was), while agreeing with the conclusions of Chauhan, J., said a few words of his own and held that the power conferred on Industrial Court/ Tribunal is wider than that of a Civil Court. Power to interfere is specifically conferred in cases of discharge or dismissal u/s 11A by Industrial Dispute (Amendment) Act, 1971 (45 of 1971) (with effect from December 15, 1971). As to why Section 11A has been inserted, learned Judge states that statement of objects and reasons discloses two reasons, namely (i) decision of Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, wherein the Apex Court observed that in cases of dismissal on misconduct, the Tribunal does not act as a Court of Appeal and substitute its own

judgment for that of the management unless want of good faith, victimization, unfair labour practice, etc. on the management's part is proved; and (ii) Recommendation No. 119 of International Labour Organization concerning the worker's right to challenge his termination before a neutral body. The Legislature, therefore, intended to permit interference in managerial discretion by the Labour Court/ Industrial Tribunal in cases where punishment resulted in his termination of employment and not in all cases. In other words, cases of punishments other than discharge or dismissal would continue to be governed by the law laid down by judicial pronouncements prior to insertion of Section 11A in the Act.

It seems, what is intended to be conveyed is, cases of discharge or dismissal are segregated from other punishments to curb the tendency of Labour Court/ Industrial Tribunal to lightly interfere with management's discretion in awarding punishments. However, it is added that where Labour Court/ Industrial Tribunal comes to the conclusion, for reasons to be stated in writing, that the punishment imposed is grossly disproportionate to proved misconduct, it may interfere with the order of punishment though such cases would be far and few, meaning thereby, basis for segregation was free and unwarranted interference generating lot of avoidable litigation.

7.10 In *Rajasthan State Road Transport Corporation v. Ram Karan Chauhan and Anr.* (supra), the High Court of Rajasthan (Coram: G.S. Singhvi, J.) said in paragraphs-12 to 15 that:

12. From the above, it is clear that once an union of employees operating in the establishment or a substantial number of workmen espouse the case of an individual workman in relation to his service conditions, the dispute relating to such service conditions becomes an industrial dispute. Such dispute may relate to an order of punishment passed by the employer in accordance with the provisions of the standing orders or any other statutory provision governing relationship between the parties or even otherwise. This may not necessarily be a punishment of dismissal or removal from service. The employer has power to impose different types of major or minor penalties on an employee. A dispute relating to dismissal or removal from service or termination of service by way of punishment may become the subject matter of Industrial dispute at the instance of an individual employee but in respect of other punishment, it can become the subject-matter of industrial dispute only on espousal by union or substantial number of workmen. It is, therefore, clear that once the union or substantial number of workmen employed in the establishment takes up the cause of an employee in relation to an action of the employer resulting in imposition of penalty other than dismissal or removal from service and a reference is made by the State Government, the Labour Court/ Industrial Tribunal gets full power to make an adjudication on the legality, propriety and justness of the action of the employer. Logically, the Labour Court or the Industrial Tribunal can give appropriate relief to the workman once it comes to the conclusion that the

punishment imposed is unjust, arbitrary or is an act of unfair labour practice.

13. In so far as Section 11A is concerned, a bare perusal of the language employed in this section makes it abundantly clear that the power conferred on the Labour Court/ Industrial Tribunal to reconsider the findings of misconduct and to interfere with the quantum of punishment is confined to the cases of dismissal or discharge from service by way of punishment. This section does not deal with cases of termination of service simpliciter or other types of penalties imposed by the employer on the workman. The very opening words of the section, namely, 'Where industrial dispute relating to discharge or dismissal of a workman has been referred ... shows that this section is confined to a particular type of cases. Statement of Objects and Reasons contained in the bill which was moved before Parliament for enactment of Section 11A clearly shows that the Legislature intended to confer appellate power on the Labour Court/ Industrial Tribunal in relation to the penalty of discharge or dismissal from service. While enacting Section 11A, Parliament had taken note of the recommendations made by the International Labour Organisation as well as the judgment of the Supreme Court in *Indian Iron and Steel Co. Ltd. v. Their Workmen* (supra).

14. It is thus clear that the argument of learned counsel for the petitioner that Section 11A does not apply to the cases other than those involving dismissal or discharge by way of punishment merits acceptance.

15. However, second submission of learned counsel that the Labour Court/ Industrial Tribunal does not have power to deal with other cases of punishments or to examine the merits or demerits of other penalties imposed by the employer cannot be accepted in its wide sweep. Acceptance of the argument of learned counsel would amount to re-writing of the Second Schedule and Third Schedule appended to the Act of 1947. Item No. 1 of Schedule II and Item No. 8 of Schedule III clearly comprehend within themselves all matters in which orders are passed by the employer under the standing orders or the rules of discipline. This would obviously include imposition of punishment other than dismissal or removal from service and there is no justification for this Court to curtail the scope of item 1 of the Second Schedule or item 8 of the Third Schedule. In fact, a narrow and restricted interpretation of the various clauses of the Second Schedule and the Third Schedule will amount to undue encroachment on the power of the Legislature. Therefore, I am clearly of the opinion that the Labour Court/ Industrial Tribunal has got full jurisdiction to examine the merits and demerits of the order of punishment passed by the employer under the standing orders or the rules of discipline where the penalty is other than dismissal or discharge from service.

Thereafter, in paragraph-20, the Court said:

20. The above discussion, however, does not lead to a negative conclusion that in cases other than those of dismissal or discharge from service by way of punishment the Labour Court/ Industrial Tribunal etc. do not have any

jurisdiction to examine the legality and propriety of the other punishment awarded to the workman. Acceptance of this proposition would mean that the Government will be robbed of its jurisdiction to make reference on the question of propriety and justness of the punishment awarded to a workman in cases other than those relating to punishment of dismissal or discharge from service even though a dispute is raised/espoused by a union or even the entire work force of the industry. This will also rob the Labour Court/ Industrial Tribunal etc., of their jurisdiction to make an adjudication of the dispute referred to them in relation to matters specified in the Second Schedule and Third Schedule. These consequences can easily be avoided by giving due regard to the jurisdiction of the Government and the Tribunal to make reference and to make adjudication of such reference of the dispute relating to various service conditions concerning the workmen employed in the industry. In my considered opinion, the latter course deserves to be adopted by the courts and also in tune with the legislative intentment.

Finally, in paragraph-23, the Court said:

23. Thus, the argument of learned counsel for the petitioner that the Labour Court/ Industrial Tribunal does not have jurisdiction to interfere with the punishment awarded by the employer on the basis of a domestic enquiry deserves to be rejected and it is accordingly rejected.

7.11 In Gujarat State Road Transport Corporation v. Vitthalbhai R. Solanki (supra), M.R.Calla, J. said in paragraph-6 that:

6. I have considered the submissions made on behalf of both the sides and have gone through the impugned award and the other relevant papers which are available. So far as Section 11A is concerned, I find that Section 11A of the Industrial Disputes Act only deals with the cases of discharge or dismissal and on the plain reading of Section 11A of the Industrial Disputes Act the argument raised by Mr. Raval prima facie can't be said to be wholly devoid of force rather the argument on the face of it is attractive, but the law which has been laid down in this regard has been considered in detail in more than one decision to the effect that Section 11A does not take inherent powers of the Labour Court or the Industrial Tribunal to deal with the question of quantum of punishment even in cases where the punishment is short of discharge or dismissal. In the decision rendered by the Division Bench in GSRTC v. P.K. Acharya (supra) it has been laid down that the Labour Court/ Tribunal is conferred with the power u/s 11A to interfere in cases specifically of discharge or dismissal only. Where the employer has visited the workman with the penalty of discharge or dismissal from service, the Labour Court under this Section is empowered to interfere with the order of punishment, if the same is not justified according to it. Labour Court/ Tribunal in such cases may give appropriate relief including any lesser punishment in lieu of dismissal or discharge. It has been observed in para 16 that as the Section does not refer to other kinds of punishment, which the management is entitled to award for certain acts of misconduct, it cannot be accepted that this Section

empowers and vests jurisdiction in the labour Court or Tribunal to interfere with the order of punishment than the one imposed by the management. The Legislature must be aware of the restricted jurisdiction and the powers of the Labour Court or the Industrial Tribunal enunciated by various judgments of the Supreme Court, as discussed above, and even then did not vest the jurisdiction or empower the Labour Court or the Industrial Tribunal to interfere with or substitute other kinds of punishment than that of discharge or dismissal. If at all the intention of the Legislature would have been to substitute other punishment, it would have specifically included them in Section 11A and would not have confirmed it to the punishment of discharge or dismissal. It also cannot be accepted that it reflects the intention of the policy of the Legislature and therefore, the said principles should also be made applicable to other kinds of punishment short of discharge or dismissal. It also cannot be accepted that it reflects the intention of the policy of the Legislature and, therefore, the said principles should also be made applicable to other kinds of punishment. If at all that would have been the policy and the Legislature wanted to restrict the managerial power for other kinds of punishment, there was no reason for not making such provisions in Section 11A or in any other provision of the Act. A reference has then been made to the Supreme Court decision in the case of *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, It has been observed by the Division Bench that the conduct of the disciplinary proceeding and the punishment to be imposed were all considered to be the managerial function which the Tribunal has no power to interfere unless the findings were perverse or the punishment was so harsh as to lead to inference of victimization or unfair labour practice. This position is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by the employer established the misconduct alleged against the workman. What was originally plausible conclusion that could be drawn by an employer from the evidence, has now given place to the satisfaction being arrived at by the Tribunal that the finding of the misconduct is correct. The limitations imposed on the power of the Tribunal by the decision in *Indian Iron & Steel Company Ltd. (supra)*, can no longer be invoked by the employer and the Tribunal is at liberty to consider not only whether the finding of misconduct recorded by the employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the Tribunal that finally decides the matter. It has been then observed by Their Lordships that even after the incorporation of Section 11A, that legal position has remained unchanged. The power to interfere with the punishment and alter the same is conferred by Section 11A on the Tribunal. These observations by the Supreme Court are an answer to the arguments advanced by the learned Advocate for the management. Managerial rights are now restricted to that extent u/s 11A and the jurisdiction of the Labour Court is widened to that extent so far as the finding of misconduct and the punishment of discharge and dismissal are concerned. The

law on the point for other kinds of punishment except the punishment of discharge or dismissal remains unaffected by the provisions of Section 11A of the Industrial Disputes Act. The Division bench of this Court in the case of GSRTC v. P.K. Acharya (supra) has enumerated six circumstances at page 385 of the aforesaid report in which the Tribunal can interfere with the finding of the management. Of course these six circumstances enumerated are only illustrative and not exhaustive and the Tribunal can interfere with the finding or the punishment in circumstances alike also but the only caution is that the Tribunal cannot interfere with the finding or nature and quantum of punishment casually or as if exercising appellate jurisdiction. The Division Bench in the aforesaid case of GSRTC v. P.K. Acharya, (supra) then proceeded to examine the facts of each case confining to the final order of punishment. In para 29 dealing with the case of misconduct not involving dishonesty and the punishment for attending the duty one hour late the Division Bench found that the punishment of reduction of pay at the initial stage and in view of the 12 years service rendered was found to be excessive, harsh and punitive leading to the inference of victimization of the workman and the Tribunal was held to be justified in interfering with the order of punishment. The High Court found that initially the petitioner in that case had been dismissed and directed to be reinstated in service with effect from September 14, 1986, reduced the pay of the respondent to the initial pay-scale and it is this punishment of reduction of the pay at initial pay-scale which was found to be excessive by the Tribunal and the order of the Tribunal was upheld by this Court. In the other case reported in Municipal Commissioner Vs. Sanatkumar D. Brahmbhatt, Municipal Commissioner, Baroda v. Sanatkumar D. Brahmbhatt on which reliance has been placed by Mr. Clerk it has been held in principle that Section 11A would normally come into play when there is order of discharge or dismissal. However, once the dispute is referred to the Tribunal, the Tribunal would have jurisdiction to decide whether the penalty is unduly severe, and it can set right the matter. In this Division bench's decision the Court held that contention raised on behalf of the Municipal Commissioner, Baroda was right to the extent that on the express language of Section 11A of the Act, such controversy could not be covered by the said provision because this provision relates to only discharge or dismissal of a workman. But the very dispute which is referred to the Industrial Tribunal for adjudication centres round the legality and propriety of the imposition of the punishment of stoppage of three yearly increments with future effect. The Industrial Tribunal in exercise of its powers u/s 11A was bound to adjudicate upon that dispute and pronounce upon the same and when there is a dispute or difference between employer and employee in connection with the punishment imposed on the workman, dehors Section 11A, the legality and propriety of the punishment has to be examined by the Industrial Tribunal in the adjudicatory process of such dispute notwithstanding the fact that the punishment was short of discharge or dismissal. Thus the ratio of the aforesaid case, based on several decisions of this Court and the Supreme Court as has been laid down in the aforesaid two Division Bench's decision of this Court, is very clear, that when the punishment itself is short of discharge or

dismissal and the reference is made to the Tribunal and the dispute relates to the question as to whether the punishment as imposed is justified or not, depending upon the facts and circumstances of each case the Tribunal may adjudicate as to whether the punishment is excessive or disproportionate or shocking to the conscience notwithstanding the punishment being short of discharge or dismissal. I accordingly hold that in appropriate cases it is always open for the Tribunal to go into the question of quantum of punishment even if the order of punishment is short of discharge or dismissal and merely because Section 11A mentions discharge and dismissal only, it cannot be laid down as a principle of universal application that in no case when the punishment is short of discharge or dismissal the Tribunal cannot interfere with the question of quantum of punishment....

7.12 In *Municipal Commissioner, Baroda v. Sanatkumar D. Brahmbhatt* (supra), the Division Bench (Coram: S.B. Majmudar & S.M. Soni, JJ.), said in paragraphs 2 & 3 that:

2. The grievance made by the petitioner-Corporation in this petition under Article 227 is that the Industrial Tribunal had patently erred in law and had also committed error of jurisdiction in referring with the punishment imposed departmentally against the petitioner by way of stoppage of three yearly increments with future effect and by substituting the punishment of stoppage of one increment without future effect. Such type of jurisdiction could not have been exercised u/s 11A of the Industrial Disputes Act, 1947 ('the Act' for short) which on its express language would not apply to such a case.

3. In order to appreciate the grievance of the petitioner, a few relevant facts may be noted. The respondent was working at the relevant time as an octroi clerk. The allegation against him was that he had allowed a truck to pass without collecting octroi. On account of this incident, three charges were levelled against him. In the departmental inquiry, it was found that out of three charges, the first charge was mostly proved, the second charge was not wholly proved but he was found to be negligent and third charge was not proved. However, ultimately, punishment by way of stoppage of three yearly increments with future effect was imposed by the disciplinary authority. The respondent raised an industrial dispute to the effect whether punishment of stoppage of three yearly increments should be vacated and whether deducted amount should be refunded to the workman or not. This dispute was adjudicated upon by the Industrial Tribunal which reached the conclusion that looking to the charges which were proved, punishment of stoppage of three yearly increments with future effect would be too harsh and consequently, punishment of stoppage of one yearly increment without future effect was substituted.

Thereafter, held in paragraph-4 that:

4. The learned Advocate for the petitioner was right when he contended that on the express language of Section 11A of the Act, such controversy could not be

covered by the said provision as such provision relates to only discharge or dismissal of a workman. However, on the facts of the present case, the very dispute which is referred to the Industrial Tribunal for adjudication centres round the legality and propriety of the imposition of punishment of stoppage of three yearly increments with future effect. Once that dispute is referred for adjudication, the Industrial Tribunal in exercise of its power u/s 11A was bound to adjudicate upon that dispute and pronounce upon it. The term "industrial dispute" is defined by Section 2(k) to mean any dispute or difference between employers and employers or between employers and workmen. It cannot be gainsaid that there is difference or dispute between the employer and employee in connection with the punishment imposed on the workman. Therefore, de hors Section 11A, the legality and impropriety of the punishment had to be examined by the Industrial Tribunal while adjudicating this very dispute which was referred for adjudication. Consequently, when the Industrial Tribunal considered the gravity of the punishment in the light of the charges having been held proved, it cannot be said that it was exercising jurisdiction not vested in it. In fact, it was its obligation to adjudicate this very dispute which was referred for adjudication.

7.13 In *Vankar R.R. v. Gujarat State Road Transport Corporation* (supra), the Division Bench (Coram: G.S. Singhvi & Anant S. Dave, JJ) said in paragraph-5 that:

...A reading of the plain language of the above reproduced provision makes it clear that Labour Court, Tribunal and National Tribunal can interfere with the punishment imposed by the employer only in the cases of discharge or dismissal. The use of the expression "relating to the discharge, or dismissal of a workman" clearly shows that the Legislature intended to confer the appellate jurisdiction upon the Labour Court, Tribunal and National Tribunal only in the matters involving discharge or dismissal of a workman. To put it differently, the Labour Court etc. cannot exercise power u/s 11A of the Act in the cases in which the employer imposes a penalty on the workman otherwise than by way of discharge or dismissal. In this view of the matter it must be held that by interfering with the punishment of reduction to the basic of his pay-scale imposed on the appellant, the Industrial Court had exceeded its jurisdiction and the learned single Judge rightly quashed the award passed by it.

Thereafter, the Court said in paragraphs 6 & 7 that:

6. Notwithstanding the aforementioned conclusion, we have scanned through the entire record for a purpose of finding out, whether the proceedings of inquiry are vitiated due to violation of rules of natural justice or that the punishment imposed by the employer is arbitrary. It is not in dispute that the order of punishment was preceded by issuance of charge-sheet to the appellant containing allegation that he had misappropriated the amount of fare collected from three passengers. The Enquiry Officer, after recording evidence of the parties returned the finding that the charge levelled against the appellant has been proved. Thereafter, the Disciplinary Authority issued show cause notice. The

appellant filed reply. This was followed by the order of punishment. The Industrial Court did not find any infirmity in the proceedings of the enquiry. Therefore, it is not possible to hold that the enquiry held against the appellant was vitiated due to violation of rules of natural justice and, on that account, the award of the Industrial Court should be sustained.

7. We also agree with the learned single Judge that in such like matters the Labour Court/ Industrial Tribunal should be loath to interfere with the discretion exercised by the employer in the matter of imposition of punishment.

7.14 In *Babulal Nagar and Ors. v. Shree Synthetics Ltd. and Ors.* (supra), the Apex Court examined whether the Labour Court/ Industrial Tribunal has jurisdiction to decide the legality and propriety of the order passed by employer under the provisions of Standing Order. The Apex Court interpreted the words legality and propriety in the light of provisions under M.P. Industrial Relations Act, 1960. The Apex Court also considered the jurisdiction of the Labour Court/ Industrial Tribunal while deciding the legality and propriety of the order passed by employer under the provisions of Standing Order. The relevant observations made in paragraphs-14 and 15 are quoted as under:

14. Having noticed the relevant provisions, it is now necessary to ascertain with precision the jurisdiction of the Labour Court u/s 61. The scheme of the standing orders applicable to the respondent-

Company would show that a penalty of dismissal or removal from service can be imposed after holding a domestic enquiry. According to the relevant provisions in the standing orders, such an order when made would be open to challenge by a substantive application u/s 66(1) and in such an application, if and when made, the Labour Court, will have jurisdiction to decide the legality and the propriety of the order. When jurisdiction is conferred upon the Labour Court, not only to examine the legality of the order. When jurisdiction is conferred upon the Labour Court, not only to examine the legality of the order as also the propriety of the order, the Labour Court can in exercise of the jurisdiction examine the propriety or impropriety of the order. The expression 'propriety' is variously understood, one meaning assigned to it being 'justice' in Legal Thesaurus by Burton at page 902. Amongst various shades of meaning assigned to the expression, the Oxford English Dictionary, Vol. VIII page 1484 sets out 'fitness; appropriateness; aptitude; suitability; appropriateness to the circumstances or condition, conformity with requirement; rule or principle, rightness, correctness, justness etc. If therefore, the justice or the justness in relation to a legal proceeding where evidence is led is questioned and the authority is conferred with jurisdiction to examine the propriety of the order of decision that authority will have the same jurisdiction as the original authority to come to a different conclusion on the same set of facts. If any other view is taken the expression 'propriety' would lose all significance. The expression 'legality and propriety' has been used in various statutes where appellate or revisional jurisdiction is conferred upon a superior authority. In *Raman and Raman Ltd. Vs. The State of*

Madras and Another, while examining the ambit of the jurisdiction of the State Government u/s 64A of the Motor Vehicles Act, 1939 as amended by the Motor Vehicles (Madras) Amendment Act, 1948 to interfere with the orders of Subordinate Regional Transport Authority on the ground of propriety, this Court observed as under:

The word propriety has nowhere been defined in the Act and is capable of a variety of meanings. In the Oxford English Dictionary (Vol. VIII), it has been stated to mean Sfitness; appropriateness; aptitude; suitability; appropriateness to the circumstances or conditions; conformity with requirement, rule or principle; rightness, correctness, justness, accuracy. If the State Government was of the opinion that respondent No. 1 had better facilities for operation than the appellant and their service to the public would be more beneficial, it could not be said that the State Government was in error in thinking that the order of the Board confirming the order of the Regional Transport Authority was improper.

In Moti Ram Vs. Suraj Bhan and Others, while examining the scope and ambit of jurisdiction of the high Court u/s 15(5) of the East Punjab Urban Rent Restriction Act, 1949, this Court observed as under:

Under Section 15(5) the High Court has jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the propriety or legality of the finding made by the authorities in the present case about the requirement of the landlord under S.13(3)(a)(iii).

After referring to these two decisions, in Ching Chong Sine v. Puttay Gowder AIR 1968 Mad 152, Alagiriswami, J. held that the court exercising revisional jurisdiction to decide the legality or propriety of an order has the power to come to a conclusion different from that arrived at by the subordinate court on the same set of circumstances. In Ahmedabad Sarangpur Mills Co. Ltd. v. Industrial Court, Ahmedabad (1965) 1 Lab LJ 155 : : AIR1966Guj88 a Division Bench of the Gujarat High Court held that the expression "legality and propriety" in Section 78(1) of the Bombay Industrial Relations Act does not limit the jurisdiction of the labour court to a revisional jurisdiction and that, any order made by the employer under the standing order is subject to the jurisdiction conferred on the labour court u/s 78, which can scrutinise the legality and propriety of the order. This jurisdiction was described by the court as original jurisdiction meaning thereby that the labour court can come to an entirely different conclusion on the same set of facts. This view was followed by another Division bench of the Gujarat High Court in Manekchown and Ahmedabad Mfg. Co. Ltd. v. Industrial Court (1967) 1 Lab LJ 463 . In Vithoba Maruti Chavan Vs. S.Taki Bilgrami and Another, a Division bench of the Bombay High Court held that the power to decide `propriety and legality of the order made under standing order does not confer a mere revisional jurisdiction but a wider jurisdiction which will enable the Labour Court to set aside the order of the employer depending upon the facts and circumstances of the case.

15. Mr. Pai on the other hand drew our attention to Vaidyanath v. Madhya Pradesh State Road Transport Corporation 1974 Lab IC 1447. While observing that a Labour Court cannot exercise the power of an appellate court and cannot reappraise the evidence, yet both the Labour Court or the Industrial Tribunal can interfere with the findings of fact of the inquiry officer of the employer only where they are not supported by any legal evidence or are so perverse that no reasonable person would arrive at such findings on the materials placed before him. It was held that the powers of the Labour Court or the Industrial Court under the Act are not wider than those of Industrial Tribunal under the Industrial Disputes Act, 1947 before the Industrial Disputes Act, 1947 before the introduction of Section 11A in the latter Act. In Kymore Cement Mazdoor Congress v. Industrial Court, Indore (1966) 1 Lab LJ 117 : AIR 1956 MP 88 , it was held that the expression `illegally or with material irregularity' in Sub-clause (c) of the first proviso of S.66(1) does not cover either errors of facts or law and they do not refer to the decision arrived at but to the manner in which it is reached. Approaching the matter from this angle, the High Court set aside the decision of the Industrial Court in revision against the order of the Labour Court on the ground that the Industrial Court had interfered with a finding of fact which even if erroneous would not confer jurisdiction on the Industrial Court to interfere in exercise of revisional jurisdiction. Mr. Pai emphasised that the view of M.P. High Court on the interpretation of Section 61 should prevail over the view of Gujarat High Court interpreting a different statute. This does not carry conviction because Section 61 of the Act is in pari materia with Section 78 of the Gujarat Act. However, it would be profitable to refer to the decision of this Court in Awadesh Kumar Bhatnagar Vs. The Gwalior Rayon Silk Mfg. Weaving Ltd. and Another, in which this Court while examining the scope of the jurisdiction conferred by Section 66 on the Industrial Court under the Act held that if the Labour Court has committed serious mistakes, the Industrial Court has jurisdiction to interfere with the same and upheld the decision of the Industrial Court which had interfered with the findings of facts recorded by the Labour court. A Full Bench of the Madhya Pradesh High Court in Nandkumar Singh v. State Industrial Court, Indore 1977 Lab IC 1279 held that perverse or arbitrary findings based on no material fall within the ambit of the phrase exercise of jurisdiction illegally or with material irregularity justifying interference in revision. It is not necessary to further multiply the authorities. Therefore, it appears well-established that the Labour Court having jurisdiction to examine the legality and propriety of the order made by the employer under the standing order will have jurisdiction to examine the propriety of the order which will permit it to come to a conclusion different from the one to which the employer arrived at. Such being the amplitude of the jurisdiction of the Labour Court if upon a wrong view of ambit of its jurisdiction Labour Court approaches the matter as if it exercises narrow revisional jurisdiction, the Industrial Court in revision can interfere on the ground of failure to exercise jurisdiction vested in the Labour Court or material irregularity in exercise of its jurisdiction.

7.15 In *Ahmedabad New Textile Mills v. Textile Labour Association and Anr.* (supra) the Division Bench (Coram: A.M. Ahmadi & R.J. Shah, JJ.) also considered the question as to what is the ambit of the Labour Court's jurisdiction under Sub-clause (i) of Clause (a) of paragraph A of Section 78(1) of the Bombay Industrial Relations Act, 1946. The relevant provisions made in paragraphs-6, 9 and 10 are quoted as under:

6. The question then is, what is the ambit of the Labour Court's jurisdiction under Sub-clause (i) of Clause (a) of paragraph A of Section 78(1) of the Act? Under the said provision the Labour Court is empowered to decide a dispute regarding the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders. Both the tests of legality and propriety have to be satisfied to defeat any action initiated u/s 79 read with the relevant clause of Section 78(1). Even if an order is legal, that by itself is not enough. It must also be shown to be proper. If an order is not in conformity with the provisions of the Act or with the rules or standing orders or is violative of the principles of natural justice and fairplay or the like, it can be interfered with by the Labour court as being illegal. But even if the order is legal, it can still be questioned on the ground that the same lacks in propriety. In a case where the legality of the order is not questioned, as in the present case, the employer must still show that his order is proper. The expression 'propriety' is capable of a variety of meanings. Its shades and nuances would have to be gathered from the context in which that word appears and the facts and circumstances of each case. In the Oxford English Dictionary, Volume VIII, the word 'propriety' is stated to mean: that which is proper (in various senses of the adjective), fitness, appropriateness, aptitude, suitability; appropriateness to the circumstances or conditions; conformity with requirement, rule or principle; rightness, correctness, justness, accuracy, etc. Therefore, when the Labour Court is called upon to decide a dispute regarding the propriety of an order passed by an employer, it is open to the Labour Court to decide whether the said order is proper, fit, appropriate, suitable and in conformity with rightness, correctness, justness and accuracy. In doing so, the Labour Court can also examine whether the punishment imposed by the employer under the impugned order is just and proper in the facts and circumstances of the case because punishment forms part of the employer's order, the propriety whereof is open to scrutiny by the Labour Court. The employer's order may comprise of the allegations, averments, facts, evidence, both documentary and oral, and reasons in support of the ultimate findings reached by the employer as well as reasons for the punishment proposed to be imposed against the delinquent. It is, therefore, obvious that when the Labour Court is invested with the power to examine the propriety of the order passed by the employer, the Labour Court can also consider whether in the facts and circumstances of the case the employer was justified in visiting the employee with the extreme punishment of dismissal. The order imposing the punishment is a part of the employer's order, the propriety whereof is under the scrutiny of the Labour Court and hence the Labour Court would be justified in

considering the appropriateness and justness of the said order. In Sarangpur Mill case (supra), this court held that the expression `legality and propriety" used in paragraph A of Section 78(1) of the Act does not limit the jurisdiction of the Labour Court to a revisional jurisdiction. This court held that the proceedings before the Labour Court were in the nature of original proceedings and hence the jurisdiction of the Labour court is wider than the jurisdiction that a revisional authority exercises while deciding the question of legality and propriety of an order passed by a subordinate authority. We are, therefore, of the opinion that the contention of Mr. Buch that the Labour Court cannot revise the punishment if it comes to the conclusion that some of the charges levelled against the delinquent were established does not appear to be in consonance with the language of the statute.

...

9. In Babulal Nagar and Others Vs. Shree Synthetics Ltd. and Others, the Supreme Court was required to consider the provisions of Sections 61 and 66 of Madhya Pradesh Industrial Relations Act (Act 27 of 1960) which empowered the Labour Court to decide the legality and propriety of any order passed by an employer under the standing orders. Section 61 inter alia conferred power on the Labour Court --

A. to decide --

(a) disputes with regard to which an application has been made under Sub-section (3) of Section 31 to it.

Section 31 entitled an employee to make an application for relief against an order of an employer made under the standing orders. Dismissal from service was one of the matters provided for in the standing orders. Relief against such an order could be obtained by preferring an application u/s 61. The Labour Court was empowered to examine the propriety or legality of an order passed or an action taken by an employer acting or purporting to act under the standing orders. The decision of the Labour Court was subject to revision by the Industrial Court u/s 66(1) of the Act. However, the jurisdiction of the Industrial court was limited by the proviso. It will thus be seen that the provisions of the Madhya Pradesh Industrial Relations Act were analogous to the provisions contained in Sections 78(1) and 79 of our Act with the difference that under our Act the decision of the Labour Court was appealable whereas under the Madhya Pradesh law a revision lay to the Industrial Court. While dealing with the question of ambit of jurisdiction of the Labour Court, the Supreme Court after referring to the dictionary meaning of word `propriety" observed in paragraph 14 as under :-

When jurisdiction is conferred upon the Labour court, not only to examine the legality of the order as also the propriety of the order, the Labour court can in exercise of the jurisdiction examine the propriety or impropriety of the order.

The Supreme Court then proceeded to add as under:-

If, therefore, the justice or the justness in relation to a legal proceeding where evidence is led is questioned and the authority is conferred with jurisdiction to examine propriety of the order or decision that authority will have the same jurisdiction as the original authority to come to a different conclusion on the same set of facts. If any other view is taken, the expression `propriety' would lose all significance.

10. What emerges from the above discussion is that the Labour Court is invested with wide jurisdiction to examine the propriety and legality of the employer's order under the standing orders. The order passed by the employer must be shown to be not only in conformity with law but also in conformity with justness and reasonableness. If the order passed by the employer is so disproportionately harsh as to shock judicial conscience, the Labour Court or the Industrial Court, as the case may be, would be entitled to interfere with the said order. It is, therefore, not possible to accept the extreme submission of Mr. Buch that the Labour Court or the Industrial Court has no power to interfere with the punishment imposed by the employer on proof of misconduct under the standing orders. If such a view is accepted, it would tantamount to investing the employer with the power to visit the extreme penalty of dismissal from service even for a minor misconduct. We are, therefore, of the opinion that having regard to the language of the statute, the context in which the expression appears and the underlying object of the benevolent legislation it is not possible to accede to the submission of Mr. Buch that once any misconduct mentioned in the standing orders is proved or held established, the Labour Court or the Industrial Tribunal cannot interfere with the order of punishment, no matter whether it is in the facts and circumstances of the case justified or not.

8. Having quoted from the judgments cited to the extent relevant and possible, we advert to deal with the main question referred for consideration. At this stage, let some provisions of the Act, to which our attention was drawn by learned counsel for the parties, be quoted:

2(k) industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons

...

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute --

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

...

10. Reference of disputes to Boards, Courts or Tribunals --

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing --

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any other matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour court under Clause (c):

Provided further that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this Sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

...

11A. Powers 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 a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the 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 re-instatement 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 proceeding 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.

...

THE SECOND SCHEDULE

(See Section 7)

Matters within the Jurisdiction of Labour Courts

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

...

THE THIRD SCHEDULE

(See Section 7A)

Matters within the Jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment;
 2. Compensatory and other allowances;
 3. Hours of work and rest intervals;
 4. Leave with wages and holidays;
 5. Bonus, profit sharing, provident fund and gratuity;
 6. Shift working otherwise than in accordance with standing orders;
 7. Classification by grades;
 8. Rules of discipline;
 9. Rationalization;
 10. Retrenchment of workmen and closure of establishment; and
- Any other matter that may be prescribed.

9. Chapter IV, Section 11, deals with procedure, powers and duties of authorities,

namely Conciliation Officer, Boards, Courts and Tribunals, Section 11A with powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in cases of discharge or dismissal of workmen. Reference of industrial disputes is referable to Boards, Courts or Tribunals u/s 10, Chapter III. Industrial Dispute is defined u/s 2(k). Industrial Disputes Act, 1947, is in operation from April 1, 1947. At that time, Section 11A did not exist but the Second Schedule and the Third Schedule were part of the Act. Therefore, prior to insertion of Section 11A, all kinds of disputes and all kinds of punishments could be examined by Labour Court/ Tribunal u/s 10 of the Act, they could examine the propriety or legality of the order passed by the employer, under the Standing Orders, of discharge or dismissal of a workman including reinstatement of or grant of relief to the workman wrongfully dismissed. Propriety or legality of an order passed by an employer cannot be confined to cases of dismissal or discharge. The language is clear and explicit, therefore, cannot be confined to cases of discharge or dismissal. Whether order is proper and whether the order is legal, is subject matter of industrial dispute. It can be order of discharge or dismissal, it can be order awarding punishments other than this. What is important for the Labour Court/ Tribunal to see is the propriety or legality of the order. The Second Schedule itself mentions cases of discharge or dismissal of workmen including reinstatement and grant of relief to workmen wrongfully dismissed. Section 11A seems to reiterate this necessitated by the Apex Court decision in *Indian Iron & Steel Company Limited v. Their Workmen* (supra) which restricts the power of Labour Court/ Tribunal holding that employer's discretion with regard to conclusion of guilt and punishment be not tinkered with since they are not appellate Courts. With this background, Section 11A is enacted dealing with cases of discharge or dismissal having serious consequence on the employment of a workman.

10. There is no disagreement amongst the parties that Section 11A deals with punishments of discharge or dismissal. Disagreement is whether the Labour Court/ Tribunal have jurisdiction to interfere in cases of other punishments? Managements say 'no' while workmen say 'yes'. Prior to incorporation of Section 11A, Labour Court/ Tribunal was guided by judicial pronouncements and interfered with punishments irrespective of their nature but the situation took turn by Apex Court decision in *Indian Iron & Steel Company Limited v. Their Workmen* (supra), limiting the jurisdiction to (i) when there is want of good faith, (ii) when there is victimization or unfair labour practice, (iii) when the management has been guilty of basic error or violation of principle of natural justice, and (iv) when on the materials, the finding is completely baseless or perverse. While prescribing these conditions, the Apex Court also said that management may have power to direct its own internal administration and discipline but the power is not unlimited. When an industrial dispute arises, Industrial Tribunals/ Labour Courts have been given powers to see whether termination of service of a workman is justified and to give appropriate relief, adding further that in cases of dismissal or discharge, the Industrial Tribunal /

Labour Court does not act as a Court of Appeal and substitute its own judgment for that of the management. As to what is the extent of interference in cases of other punishments, the Apex Court does not opine in *Indian Iron & Steel Company Limited v. Their Workmen* (supra). Therefore, jurisdiction in such cases is left untouched, which means, Labour Court/ Tribunal can interfere to the extent permitted by judicial pronouncements and facts of individual case. While examining the legality and propriety of the order, subject matter of industrial dispute, irrespective of nature of punishment, without being exhaustive, same can be (1) want of good faith, (2) victimization or unfair labour practice, (3) basic error or violation of principles of natural justice, (4) finding completely baseless or perverse, (5) colourable exercise of power or want of bonafide, (6) punishment shockingly disproportionate in the facts of the case, and (7) conduct of workman/ workmen, present or past.

11. Adverting to the question, which of the two judgments referred to by the Division Bench (Coram: R.S.Garg & Ravi R. Tripathi, JJ.) decides the law correctly, our answer is, Section 11A may exclusively deal with cases of discharge or dismissal, but criteria, after common reference u/s 10, to decide an industrial dispute is same, namely, the Second Schedule and the Third Schedule. In other words, in all cases of punishments, Labour Court/ Tribunal can examine the legality and propriety of punishment, irrespective of nature thereof. Scope of examination of an industrial dispute and extent of interference is same irrespective of the fact that Section 11A deals specifically with cases of discharge or dismissal, because, as said, in all cases, it is the legality and propriety of the order passed by the employer which is to be examined.

In cases of discharge or dismissal, the Labour Court/ Tribunal exercises power u/s 10 read with Section 11A read with the Second Schedule and the Third Schedule, while in other cases, it exercises jurisdiction u/s 10, read with the Second Schedule and the Third Schedule. Mere mention of Section 11A while exercising power in cases of punishments other than discharge or dismissal would not make the order illegal since jurisdiction to interfere is traceable to Section 10, read with the Second Schedule and the Third Schedule.

12. The Division Bench decision (Coram: G.S. Singhvi & Anant S. Dave, JJ.) [*Vankar R.R. v. Gujarat State Road Transport Corporation* (supra)] is relevant to the extent, parties have no disagreement, that Section 11A is confined to cases of discharge or dismissal. Still, the Court examined the case on merits, finding no fault with procedure and laws, did not interfere with the discretion exercised by the employer in the matter of imposition of punishment. The Division Bench (Coram: S.B. Majmudar & S.M. Soni, JJ.) [*Municipal Commissioner, Baroda v. Sanatkumar D. Brahmbhatt* (supra)] is correct when it holds that punishments other than discharge or dismissal are not covered u/s 11A of the Act. It is also correct when it holds that dehors Section 11A the legality and propriety of punishment had to be examined by the Industrial Tribunal/ Labour Court while adjudicating the industrial dispute referred to it for adjudication, but holding that

once an industrial dispute is referred for adjudication, the Industrial Tribunal / Labour Court, in exercise of its power u/s 11A, is bound to adjudicate upon the dispute and pronounce upon it, is not correct, because dispute is not referred u/s 11A, it is referred u/s 10, and once referred, be it punishment of dismissal or discharge or any other kind of punishment, Labour Court/ Industrial Tribunal is bound to adjudicate upon the legality and propriety of punishment order referred in dispute and pronounce upon it.

13. Therefore, Reference is disposed of in terms aforesaid and case(s) decided accordingly.