

(2008) 04 KAR CK 0034

In the Karnataka High Court

Case No : Writ Appeal No's. 1635 and 2343 of 2007

Institute for Social and Economic Change

APPELLANT

Vs

Sri Siddiah Shetty
 Sri Siddiah Shetty Vs The Director,
Institute for Social and Economic Change

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4A), 2 A

Citation : (2008) 6 KarLJ 66 : (2008) 5 KCCR 677 SN

Hon'ble Judges : S.R. Bannurmath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : P.S. Sawkar, for Sundara Swamy Associates in Writ Appeal No. 1635 of 2007 and R. Muralidharan, in Writ Appeal No. 2343 of 2007, for the Appellant; R. Muralidharan, for Krishna in Writ Appeal No. 1635 of 2007 and P.S. Sawkar, for Sundara Swamy Associates in Writ Appeal No. 2343 of 2007, for the Respondent

Judgement

1. Management has filed W.A. 1635/2007. Workman has filed W.A. 2343/2007. Both these appeals are directed against the order passed on 31.7.2007 by the learned Single Judge, allowing in part the writ petition filed by the workman in W.P. 45292/2003. Workman in his appeal, has also prayed to hold the domestic enquiry conducted against him, as unfair, improper and to order his reinstatement into service, with backwages and all consequential benefits. Since both the appeals raise common questions of facts and law, they are taken up together for consideration and disposal.

2. For the sake of convenience, the parties will be referred to as "workman" and "management" respectively.

3. Management had appointed the workman, as a watchman in its establishment. Management issued a charge sheet dated 1.4.1998 to the workman, alleging that he had unauthorisedly removed a flexible water hose-pipe of about 65 feet in length from ISEC campus on 8.12.1997 and had sold it to one Ramaiah, which was a gross misconduct. A second charge sheet dated 6.7.1999 was issued by

the management to the workman alleging that one M. Ramu, had lodged a complaint dated 25.2.1999 stating that, on that day, at about 1 p.m., workman went to his house, which is in the ground floor of quarter bearing No. 24/1, shabbily dressed and abused him and his wife, In filthy language and it was found that the workman was under the influence of alcohol and when the workman was stopped from creating nuisance and was asked to behave in a proper manner, he was abused and threatened. Allegations were also made that on 25.2.1999 and 26.2.1999, similar acts were repeated against others. Workman has submitted the replies to the charge sheets. Enquiry Officer was appointed, the disciplinary enquiry was conducted and thereafter report was submitted, copy of which was furnished to the workman, to which, he has submitted the reply. Disciplinary Authority on consideration of the record, has passed an order dated 23.3.2001, dismissing the workman from service.

4. The workman raised an industrial dispute by filing an application u/s 2-A r/w Section 10(4-A) of the Industrial Disputes Act, 1947 ("the Act" for short), challenging the said order of dismissal. The petition was opposed by the management by filing counter statement. Based on the pleadings, issues were framed by the Labour Court. Preliminary issue was framed regarding validity of the domestic enquiry held, in which, management examined the enquiry officer as MW. 1 and produced Exs. M.1 to M.15 and the workman examined himself as WW. 1. By an order dated 6.3.2002, it was held that, the enquiry held, was just and proper. Thereafter, the Labour Court has heard the arguments on the merit of the dispute and by its award dated 21.1.2003, has rejected the petition filed by the workman.

5. The order dated 6.3.2002 and the award of the Labour Court dated 21.1.2003 were questioned by the workman in the writ petition. The learned Single Judge by an order dated 31.7.2007 has allowed the writ petition in part, setting aside the order of dismissal and directing the reinstatement without any backwages and with continuity of service from the date of dismissal till the workman is taken on duty.

6. We have heard Sri R. Muralidharan, learned Counsel for the workman and Sri Pradeep Sawkar, learned Counsel for the respondent. We have perused the writ appeals and the paper books filed by the management containing the copies of the proceedings before the enquiry officer and the Labour Court.

7(a). The first contention of Sri Muralidharan, learned Counsel for the workman is that, the domestic enquiry is vitiated on account of denial of assistance by advocate, He pointed out that, the management was represented by a law graduate. He pointed out that, the workman had to depend on "next friend", that the evidence was recorded in English language, which, the workman did not correctly understand and that the evidence ought to have been recorded in Kannada language and in view of the failure on the part of the enquiry officer in not recording the evidence in Kannada language, the case of the workman was adversely affected and thus the enquiry proceedings are not just and fair. He

contended that, in the said background, the order dated 6.3.2002 passed by the Labour Court on domestic enquiry, to be bad and illegal.

(b). Refuting the said contentions, Sri Pradeep Sawkar, learned Counsel for the management took us through the record of the enquiry proceedings, evidence of MW.1 before the Labour Court and the documents marked at Exs. M1 to M15, as well as the evidence of the workman before the Labour Court as WW.1. Learned Counsel pointed out that, the material aspects relating to the conducting of the enquiry in just and fair manner has been dealt at length with reference to the evidence on record produced before the Labour Court, in the order dated 6.3.2002, which is based on proper consideration and appreciation of the material evidence placed on record and that the said order is neither perverse nor illegal, calling for interference in the writ jurisdiction.

(c). In the case of Crescent Dyes and Chemicals Ltd. and Rama Naresh Tripathi reported in Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, Hon''ble Supreme Court has held that, the right to be represented through counsel or agent can be restricted, controlled or regulated by Statute, Rules, Regulations or Standing Orders. A delinquent has no to be represented through Counsel or Agent, unless the law specifically confers such a right. The requirement of the rules of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent.

(d). Though the presenting officer was a law graduate, he was not a legal practitioner. He was working only as an Assistant Registrar, discharging the administrative functions in the establishment. It has come on record that, the instant case was the first case, in which, he was acting as the presenting officer. Considering the fact that he was merely a holder of law degree, he had not practiced as an advocate and had no previous experience of conducting the domestic enquiry, it was held by the Labour Court that the management was not represented by legal practitioner or legally trained person with an ability to function as prosecutor in domestic matters.

(e). Labour Court has also taken into consideration the fact that the workman took next friend Dr. Murthy, an Assistant Professor. After the said person withdrew from the enquiry for personal reasons, the workman took the assistance of Mr. Venkatesh and later Mr. Prakash. It has also come on record that the workman was consulting his lawyer on each and every occasion and was giving explanations and submitting representations. It has also come on record that after recording of examination-in-chief of each witness, the enquiry was adjourned to enable the workman and his next friend to prepare and to cross examine the witness on the next hearing date. In the meanwhile, workman was getting the questionnaire prepared by his advocate and was eliciting answers with reference to the questionnaire prepared, in consultation with his advocate. The workman has admitted in his evidence as WW1 before the Labour Court that, the proceedings though was recorded in English language by the enquiry officer,

the same was translated and explained to him in Kannada language and thereafter only, he has put the signatures and collected the copies of day-to-day proceedings, based on which, he consulted his advocate and has later proceeded with the enquiry. It was not the case of workman that his "next friend" did not know English language or was handicapped to conduct the enquiry. There are no allegations of any nature against the enquiry officer and also about the enquiry record. Hence, in our view, no prejudice as such, has occasioned to the workman in the domestic enquiry proceedings, for not permitting the right of representation by an advocate and in not recording the proceedings in Kannada language.

(f). Labour Court in the order dated 6.3.2002, has noticed the material evidence relating to the conducting of domestic enquiry by the enquiry officer and has arrived at the finding that the enquiry conducted in respect of the charge sheets dated 1.4.1998 and 6.7.1999 to be fair, proper and valid. The Labour Court has taken into consideration both oral and documentary evidence placed before it and has passed the detailed order, which in our view, does not suffer from any legal infirmity, calling for interference. It is settled position of law that unless the disciplinary proceedings are shown to be illegal or prejudice is established by the workman, amounting to violation of principles of natural justice, writ Court cannot interfere with the finding of facts by the Labour Court. Learned Single Judge has also not held that the proceedings of disciplinary enquiry to be bad or illegal or being in violation of principal of natural justice. We do not find that the order dated 6.3.2002 passed on preliminary issue to be suffering from any error. Hence, the contention urged by the learned Counsel is devoid of merit and is hereby rejected.

8(a). Second contention raised by the learned Counsel for workman is that, on account of illwill of Sri Ramu, the pipe was deliberately planted in Ramaiah's house and the workman was falsely implicated. He contended that the charge of theft has not been proved and established in accordance with law and hence, the enquiry officer as well as the Labour Court committed illegality in holding the charge, to be proved. He contended that, even the other charge has not been proved in accordance with law and the findings of the Enquiry Officer were based on surmises and conjectures and without the support of material evidence, which ought not to have been accepted by disciplinary authority and the Labour Court.

(b). Learned Counsel for the management refuted the contentions, contending that, the charges levelled against the workman, have been duly proved by examining the witnesses in the enquiry, which record was produced before the Labour Court through MW.1 and on consideration thereof, the findings have been recorded, both by the enquiry officer as well as the Labour Court and the conclusions reached are based on consideration of evidence on record and hence there is neither surmises nor conjectures, as alleged. Learned Counsel invited our attention to the findings in the enquiry report and also the award passed by the Labour Court, to contend that the same have been passed after due

consideration of the matter.

(c). Learned single Judge has held as follows:

Under the circumstances, although in a concurrent finding the enquiring authority as well as the Labour Court has come to the conclusion that the claimant is guilty of the charges, the order of dismissal would be harsh.

(d). Having perused the record of enquiry, the record of the Labour Court in our view, the charges levelled against the workman have been rightly held to be proved, as the same is based on the consideration of evidence of MWs.1 to 6 in the enquiry. Even the perusal of the order passed by the learned Single Judge would indicate that, the learned Single Judge appears to have held that, the charges have been proved, but the punishment imposed would be harsh, which aspect would be considered at a later stage in this order. Considering the evidence of the witnesses, MWs. 1 to 6 and the documents that have been marked in the course of disciplinary enquiry, the findings recorded by the enquiry officer and the Labour Court cannot be termed as either perverse or not backed by material on record. The Labour Court has rightly arrived at the conclusion that the charges levelled against the workman have been proved. As it is a finding on fact, which cannot be termed as perverse or arbitrary, no ground has been made out to hold otherwise, as contended by the learned Counsel for the workman.

9(a). Third contention raised by the learned Counsel for workman is that, the punishment imposed is disproportionate and too harsh, considering which, learned Single Judge has allowed the writ petition in part, which in the facts and circumstances of the case should not be interfered with. Learned Counsel contended that, the exercise of jurisdiction by the learned Single Judge to interfere with the quantum of punishment, in the facts and circumstances of the case, to be justified.

(b). Learned Counsel for the management contended that, the finding of fact recorded in the department enquiry and accepted by the Labour Court, cannot be interfered with, in a proceeding under Article 226 of the Constitution of India and that the learned Single Judge has erred in interfering with such a finding which has lead to miscarriage of justice and hence appeal filed by the management being meritorious, should be allowed. He contended that, learned Single Judge has taken into consideration extraneous material, has misdirected himself and has arrived at wrong conclusions. He contended that, the order passed by the learned Single Judge, is not a reasoned order and the gravity of the proved misconduct involving theft of material belonging to the employer, has not been noticed. He pointed that, the other misconduct was that, the workman indulged in consumption of alcohol and abusing women and other resident members in the quarters by use of abusive and filthy language, which has been established in the enquiry and accepted by the Labour Court. He contended that, in such circumstances and the gravity of proved misconduct, the granting of relief of reinstatement by the learned Single Judge, to be a case of excessive exercise of

jurisdiction of judicial review and was only because of the misplaced sympathy and benevolence.

10. The point for consideration is;

Whether in the facts and circumstances of the case, the learned Single Judge was justified, in exercise of discretionary power to modify the order of dismissal and directing reinstatement?

From the perusal of the record it is clear that, the charges levelled against the workman have been proved, as rightly held in the disciplinary enquiry and by the Labour Court. Labour Court considering the issue regarding punishment has held that, the charges are grave and serious in nature and having regard to the same, it is not a case where the Court can come to the conclusion that the punishment is not too harsh nor can it be said that it shocks the conscience of the Court and has thus dismissed the claim petition.

11. Hon"ble Supreme Court in the case of Amrit Vanaspati Co. Ltd. Vs. Khem Chand and Another, , considering the contention that, even if the charges are very serious In nature, the punishment imposed if disproportionate to the charges levelled and proved against the workman, can not be interfered with, has held as follows:

8. We are unable to countenance the submission made by the learned Counsel for the respondent. This Court in a Judgment reported in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, exhaustively referred to various decisions of this Court and gave a clear picture of the principles governing the jurisdiction of the Tribunals when adjudicating disputes relating to dismissal or discharge. Paragraph 32 of the said judgment is reproduced here:

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 to satisfy itself about the legality and validity of the 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 straightway, 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.

9. This Court in the above judgment held that even if no inquiry has been held by the employer or the inquiry held is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the 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 contrary. Hence, the

submission made by the learned Counsel for the respondent has no merit In view of the above verdict of this Court and referred to above.

12. In the very same decision, with regard to the jurisdiction of the High Court to interfere with the factual findings of the Labour Court and the imposition of punishment and regulation of consequential benefits, it has been held as follows:

In our opinion, the High Court while exercising powers under writ jurisdiction cannot deal with aspects like whether the quantum of punishment meted out by the Management to a workman for a particular misconduct is sufficient or not. This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence. In our opinion, the High Court has gravely erred in holding that the evidence of respondent No. 1 was not considered by the Labour Court and had returned finding that the evidence of respondent No. 1 did not inspire any confidence. We are of the opinion that the High Court is not right in interfering with the well considered order passed by the Labour Court confirming the order of dismissal.

13. In the case of Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S. Viswanathan, , with regard to the right of the High Court under Article 226 or 227 of the Constitution of India, to go into the question decided by the Labour Court or tribunal, it has been held as follows:

12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, Is the final court of facts in these type of disputes, but if a finding of fact Is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

13. The Divisional Bench too in appeal, in our opinion, has committed the same error. May be, there was some justification, since if it had to allow the appeal, then it had to consider the points on facts decided by the learned Single Judge. In that process it also took up for consideration every bit of evidence that was

considered by the Labour Court as well as by the learned single Judge and disagreed with the finding of the learned single Judge.

(Italics is by us for emphasis)

14. Hon'ble Supreme Court in the case of Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , considering the scope of Section 11-A of the Industrial Disputes Act, has held as follows:

20. It is no doubt true that after introduction of Section 11-A 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 concerned workman 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 11-A 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 requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court can not by way of sympathy alone exercise the power u/s 11-A of the act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us, i.e. Orissa Cement Ltd. (supra) and New Shorrock Mill (supra), this Court held: punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein-above.

(Italics is by us for emphasis)

15. From the record, it is seen that the charges levelled against the workman and established in the enquiry are grave in nature, in that, he has committed theft of employer's property and has also used abusive and filthy language within the campus against the residents. Considering the gravity of proved misconduct, employer having lost the confidence, imposed the punishment of dismissal from service. Labour Court on consideration, did not find the punishment imposed to be too harsh or disproportionate. Even the learned Single Judge has not held that, the punishment imposed on the workman was shockingly disproportionate and disturbed his conscience. Without recording any reasons, learned Single Judge has interfered with the punishment imposed on the workman, which is not permissible, in view of the law declared by the

Hon"ble Supreme Court as above and also in the case of Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others, , wherein it has been held as follows:

11. Question then is whether the misconduct alleged against is so serious or grave as to create a genuine lack of confidence in respondent by the appellant.

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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 guaranty against discrimination. An unlimited jurisdiction leads to unreasonableness/ No authority" be it an 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.

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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 is an active participant in cultural activities is 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 on the respondent which according to the Labour Court was shaken by the misconduct.

18. In our opinion with 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 11-A of the Act. It is because of the above erroneous legal foundation as to the vastness of power vested with the Labour Court. 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.

19. The learned Counsel for the appellant has rightly relied upon the decisions of this Court in support of her argument. In *Air India Corporation (supra)* this Court held with reference to loss of confidence as follows:

...Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge....

20. In *Francts Kletn & Co. Private Ltd. (supra)* this Court held:

In our view when an employer loses confidence in his employee, particularly in respect of a person who is discharging an office of trust and confidence, there can be no justification for directing his reinstatement....

...Even this direction is not a valid direction because if once the Company has lost confidence in its employee, it is idle to ask them to employ such a person in another job. What job can there be in a Company which a person can be entrusted with and which does not entail reposing of confidence in that person.

21. In *Janta Bazaar South Kanara Central Cooperative Wholesale Stores Ltd.* (supra) this Court held:-

...Once act of misappropriation is

proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled....

...In case of proved misappropriation, in our view, there is no question of considering past service record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

22. In *UPSRTC* (supra) this Court held:

...The employee has been found to be guilty of misappropriation and in such an event, if the appellant-Corporation loses its confidence vis-a-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own in allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment....

23. With reference to Section 11-A of the Act, in the case of *The Workmen of Firestone Tyre & Rubber Co. Ltd.* (supra) this Court Held:

...Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation....

...If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give every cogent reasons for not accepting the view of the employer....

24. In *CMC Hospital Employees' Union and Anr.* (supra) this Court held:

...Section 11-A...cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power u/s 11-A 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 11-A 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....

25. In our opinion all the above judgments apply with full force to the facts of

this case. The Labour Court has itself come to the conclusion the management has lost confidence in the respondent. If that be the case the question of it exercising its jurisdiction u/s 11-A to alter to reduce the punishment does not arise.

In the case of Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, , the Hon"ble Supreme Court has held that, if the employer has lost the confidence on the employee, it would not be safe and in the interest of the management to continue the employee in the service and has held as follows:

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

23. It is also not open to the Tribunal and Courts to substitute their subjective opinion in place of the one arrived at the domestic Tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

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

(Italics is by us for emphasis)

16. Since the Labour Court on consideration of the entire material placed by the workman and the management, found that, no case was made out by the

workman and dismissed the claim petition, learned Single Judge by misdirecting himself, has arrived at the wrong conclusion and has interfered with the punishment, by showing undue sympathy and benevolence to the workman, which in the facts and circumstances of the case, was not called for.

17. In the circumstances, the learned Single Judge W was not justified in passing the impugned order, allowing the writ petition in part. The management has established the misconduct on the part of the workman before the Labour Court and considering the gravity of proved misconduct, the Labour Court did not find any ground to interfere with the punishment imposed, which in our view, was justified. Consequently, the impugned order passed by the learned Single Judge, being erroneous cannot be sustained.

18. For the foregoing discussion and reasons, we pass the following:

ORDER

(i) W.A.1635/2007 filed by the management, is

allowed and the order passed by the learned Single Judge in W.P.45292/2003 dated 31.7.2007, is hereby set aside.

(ii) Consequently W.A. 2343/2007 filed by the workman being devoid of merit, is hereby dismissed.

(iii) W.P. 45292/2003 filed by the workman, is held to be devoid of merit and shall stand dismissed, restoring the award dated 21.1.2003 passed in I.D. No. 31/2001 by the Presiding Officer, First Additional Labour Court, Bangalore.

(iv) In the facts and circumstances of the case, parties are directed to bear their respective costs.