

**(1990) 11 KL CK 0012**  
**In the High Court Of Kerala**  
**Case No : O.P. 3406 of 1987-K**

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|--------------------------------------------------------|------------|
| Kerala Forest Development Corporation Regional Manager | APPELLANT  |
| Vs                                                     |            |
| K. Appu and Others                                     | RESPONDENT |

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**Date of Decision :** 20-11-1990

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11A  
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 332

**Citation :** (1990) 11 KL CK 0012

**Hon'ble Judges :** Chettur Sankaran Nair, J

**Bench :** Single Bench

**Advocate :** T.R. Raman Pillai, for the Appellant; Government Pleader for Respondent 3 and U.K. Ramakrishnan for Respondent 1, for the Respondent

**Final Decision :** Allowed

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## Judgement

Chettur Sankaran Nair, J.—Petitioner management seeks to quash Ext. P-4 award of the second Respondent Labour Court, Kozhikode ordering reinstatement of workmen, dismissed on charges of misconduct.

2. The labour Court found that the enquiry was proper and that it was not vitiated for any reason. In paragraph 7 of the award the labour Court held:

The management has therefore succeeded to establish the guilt of the workmen before the Enquiry Officer by producing legal evidence.

The charge against the workmen was that they assaulted the Assistant Manager, after holding him in wrongful confinement. He was beaten with chappals, hands, and with a steel chair. The workmen prevented medical aid being administered. They also prevented Ors. , from taking food to the Assistant Manager. Incidentally, the Workmen were charged and convicted for offences under Sections 143, 147, 148, 341 and 332 read with Section 149 I.P.C. for the same act. The Magistrate imposed prison sentences on them, but the Sessions Judge released them under the Probation of Offenders Act.

3. After finding that the charges were established the labour Court observed:

...the Sessions Court had taken a lenient view and had released these workers under the Probation of Offenders Act. That was done with the purpose of reforming them. They had been out of employment for four years. I feel that is sufficient punishment for these workers. The punishment of dismissal has therefore to be set aside and these workers are to be reinstated.... they are not entitled to backwages or any other relief since they are proved to have committed misconduct....

Learned Counsel for Petitioner submits that after finding such a grave charge of misconduct, there was no justification for ordering reinstatement. To reinstate persons guilty of such grave misconduct, would be subversive of discipline and the management would find it difficult to maintain even a remote semblance of discipline, submits counsel. He adds that the order Would have a demoralising impact, on the other workers.

4. Counsel for the union would submit that justice must be tempered with mercy and cited the decision in Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, to support his contention. He relied on the decision in Scooters India Limited Vs. Labour Court and Others, also, and submitted that the concept of reformation should be applied. It is well settled that justice tempered with mercy is an established principle. It is equally settled, that reformation also has been recognized as a relevant consideration. That, is not to say, that unlimited leniency or leniency unrelated to facts, is justified. The core thought in the decisions of the Supreme Court is that "harsh" punishments should not be imposed. The harshness or otherwise of punishments, must be determined with reference to the facts of each case. It is not the law that deterrent punishments should never be imposed. There are a variety of fact situations which cannot be ascertained with computerised precision. Therefore, discretion is vested with tribunals to examine the appropriateness of punishments. Tribunals cannot lose sight of the fact, that appropriate punishments must be imposed when the facts of the case call for them. Discipline, accountability and devotion to duty are values on which there can be no compromise. An institutional perspective must prevail in these areas and acts of misconduct cannot be made inconsequential by exaggerated notions of reformation or mercy. No system can survive long, without discipline and a sense of regimentation.

5. It is necessary to notice the law laid down by the Supreme Court in a cetina of decisions beginning with Ananda Bazar Patrika (P) Ltd. Vs. Its Workmen, . The Supreme Court held that the punishment of dismissal was the appropriate punishment in a case of gross indiscipline. In the The Calcutta Jute Mfg. Co. Ltd. Vs. Calcutta Jute Mfg. Workers" Union, the Supreme Court held that a case of using filthy language to the higher officer and preventing him from discharging his duties merited the punishment of dismissal. Likewise, in Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen, the Court found that the punishment of dismissal was the appropriate punishment for a driver who had

appropriated two tyres belonging to the company for himself. Again, in Management of Eastern Electric and Trading Co. Vs. Baldev Lal, in a case of gross indiscipline the Court felt that the delinquent workmen deserves no less a punishment than dismissal. Even in cases where the order of dismissal is found unsustainable, reinstatement is not the invariable rule, and where a degree of confidence is involved, reinstatement cannot be ordered if for valid reasons the management pleads lack of confidence. The Supreme Court in Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, and Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, , has stated so.

6. I have examined the order of the Labour Court in the light of the decisions of the Supreme Court. In Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, , it is held that the High Court can exercise the same powers as the tribunal or the labour Court u/s 11-A of the Industrial Disputes Act. On an anxious consideration of the facts, I feel that the workmen who had no regard for discipline and who displayed moral turpitude of a great degree cannot be reinstated, without adversely affecting the efficient functioning of the industry.

The workmen not only acted in a very high handed manner, but also in an inhumane manner, preventing medical care and food, being reached to the injured Assistant Manager. It would be against concerns relevant in areas of good management, to reinstate the workmen. Even by very liberal standards the view of the labour Court cannot be justified. Accordingly, Ext. P-4 award to the extent of ordering reinstatement is quashed and the order of dismissal is restored.