

(2020) 06 DEL CK 0159

In the Delhi High Court

Case No : Civil Writ Petition No. 6214, 6310 Of 2019, Civil Miscellaneous Application No. 26675, 53149 Of 2019, 5931, 8035, 9149, 11782, 12747, 12748, 12790, 12791, 12792, 12793, 12794 Of 2020

Life Insurance Corporation Of India

APPELLANT

Vs

Manmod Shankar

RESPONDENT

Date of Decision : 29-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2020) 06 DEL CK 0159

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Mohinder Singh, Lovekesh Aggarwal, Adab Singh Kapoor, Raghav Mittal

Final Decision : Dismissed

Judgement

Prathiba M. Singh, J

1. These are two petitions arising out of the impugned award dated 11th February, 2019 passed by the Presiding Officer, Labour Court by which the Workman - Mr. Manmod Shankar was reinstated into service. The operative portion of the order reads as under:

"17- Having regard to the ratio of aforesaid rulings, coupled with gravity of the misconduct relating to unauthorized absence from duty by the claimant, this Tribunal is of considered opinion that the quantum of punishment awarded to the workman/claimant by the Management is disproportionate & excessively, high inasmuch as unauthorized absence from duty is not a kind of misconduct of moral turpitude or indulging in corrupt practices, warranting imposition of penalty of dismissal/removal from service. To my mind, ends of justice would be met if punishment of "removal from service" awarded against the claimant is set aside and he is ordered to be reinstated into service, however, without any pecuniary/

monetary benefits during the intervening period i.e. from the date of his removal from service till publication of the Award. Award is passed accordingly."

As per the above award, the Labour Court was of the opinion that the punishment of termination awarded to the Workman was disproportionate and excessive. Accordingly, the Labour Court reinstated the Workman. At the same time, however, the pecuniary and monetary benefits for the intervening period i.e. from the date of his termination on 23rd July, 2016 till date of publication of award were not given. The above award was communicated to the appropriate Government and was published on 26th February, 2019.

2. The Workman joined the Life Insurance Corporation of India as an Assistant on 25th September, 1989. Chargesheet dated 30th July, 2015 was issued to him on the ground of unauthorised absence and on various other grounds. The said charge sheet was followed by a show cause notice and finally resulted into an enquiry and termination. The Workman filed two appeals before the Appellate Authority. The said appeals were rejected. Aggrieved by the order of the rejection of appeals on 6th January, 2017 he approached the Labour Court, which directed his reinstatement vide the impugned order.

3. On behalf of the LIC, the submission of Mr. Mohinder Singh, Id. counsel is that the Workman is a person who is habitually guilty of insubordination. He has been given at least three charge sheets - once in 2001, secondly in 2009 and thirdly in 2014. He never obeyed orders passed by his superiors. He also used to refuse to perform any of the duties which were allotted to him, and finally he was given the charge sheet dated 30th July 2015. The primary reason for which this charge sheet was issued, was that he was transferred from Branch 11-M at Shahdara to Branch 11-L at Narela and despite taking discharge from the Shahdara branch, he failed to join the Narela Branch. He sought to justify the non-joining by submitting a letter that he was suffering from an illness. In view of his long conduct of insubordination and non-performance of duties as also unauthorised absence, charge sheet dated 30th July, 2015 was issued.

4. After the charge sheet was issued, an Enquiry Officer was appointed to conduct an enquiry into the matter. The Workman failed to file a reply before the Officer. He appeared only on one occasion before the Officer on 15th October, 2015 and thereafter failed to appear. Upon the charges being proved against the Workman, show cause notice was issued to him on 12th April, 2016. He did not file a reply to the show cause notice, and finally the disciplinary authority, on 23rd July, 2016, gave the final order terminating his services.

5. The Workman filed two appeals against the said order. The said appeals were rejected by the Appellate Authority vide orders dated 6th January, 2017. It is the submission of Mr. Mohinder Singh, Id. counsel that the impugned order has wrongly applied legal propositions. He has taken the Court through the impugned order to argue that once the Workman had accepted the finding against him that that the departmental enquiry was conducted in a fair and proper manner and

that a proper opportunity was given to him to participate in the enquiry and defend himself, there was complete compliance of the principles of natural justice. He submits that two judgments relied upon by the Labour Court i.e., *Girish Bhushan Goyal v BHEL & Anr.* (2014) 1 SCC 82 and the judgment in *Cholpadi Kamath v PSV Mallya & Ors.* (2006) IIILLJ 1007 Guj are both not applicable on the facts. He submits that in those matters, the Court had exercised discretion in favour of the workmen because the factual position was different, and the Court came to the conclusion that the removal of the workman was disproportionate, and mere negligence could not result in removal or termination. Thus, these two judgments were not applicable. It is further submitted that in the impugned order, the Labour Court had seriously erred in only considering the unauthorised absence. In fact the charge sheet set out various other reasons which were neglected by the Labour Court. The settled position in law is that unless and until the punishment is shocking the same ought not to be set aside.

6. On the other hand, Mr. Adab Singh Kapoor, Id. counsel appearing for the Workman submits that this is a case where the Workman joined the service of the LIC way back in 1989, and had given 21 years of unblemished service. It was only when he was started writing letters against the senior management about malpractices which were taking place in the LIC, that charge sheets came to be filed against him since 2001. After 2001, according to Mr. Kapoor, Id. counsel, the Workman has been victimized during the entire period. Moreover, he submits that the LIC was conscious of the fact that the employee was living in Ghaziabad (U.P.) and thus to compel him to travel to Narela was merely to harass and frustrate him. He submits that considering the medical condition of the Workman, who was suffering from hernia, the transfer itself was mala fide. He further submits that the mala fide nature of the transfer is evident from the subsequent retransfer to Shahdara. He submits that that the period during which he did not join the Narela Branch could not be held to be unauthorised absence, as there are medical grounds which justified his non-attendance. The second limb of the argument on behalf of the Workman is that for the past misconduct, if any, the Workman has already been punished. His pay grade was reduced, and promotion was not given to him, thus, for the same so-called offence or irregularity or misconduct he cannot be punished twice.

7. He further submits that the medical certificate relied upon by the workman had clearly certified the fact that he had undergone surgery and that it was not advisable for him to travel long distances. He relies upon the following judgments to submit that the termination if wrongful, the entire back wages need to be paid to the employee:-

(i) *Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya* (2013) 10 SCC. 324

(ii) *Tapash Kumar Paul v. Bharat Sanchar Nigam Limited and Anr.* (2014) 15 SCC 313.

Thus, the impugned award is liable to be modified to the extent that it fails to give the entire back wages and the non-payment of the monetary benefits for the intervening period i.e., from the date of removal till his reinstatement.

Mr. Kapoor submits that once reinstatement is directed, all monetary benefits ought to be granted. He relies upon Deepali Gundu (supra) to submit that if there is wrongful termination or if there is victimization, which is attempted to be camouflaged, the same is liable to be set aside. He further submits that the ground of unauthorised absence is nothing but a mistake by the LIC, which entitles him to monetary benefits as held in Shiv Nandan Mahto v. State of Bihar and Ors. (2013) 11 SCC 626 . He further relies upon the judgment in On-Dot Couriers & Cargo Ltd. v Anand Singh Rawat (2009) 165 DLT 89 to argue that the Workman should also be given complete interest for the entire amount due and payable.

8. In rejoinder, Mr. Mohinder Singh, Id. counsel submits that the medical ground, which is being alleged by the Workman is only a bogey, and he had never complained about the hernia even when the transfer orders were issued. The medical condition of hernia existed for several years. He did not rely upon the said medical ground, but he accepted his transfer, and thereafter found the medical ground as an excuse. The retransfer to the Shahdara (Geeta Colony) branch was only because there was some vacancy for a short period and to accommodate the Workman. He further submits that the Workman has made baseless complaints, and brought disrepute to the organisation by writing to senior authorities such as Prime Minister's Office and the Finance Minister's office and he also made allegations against the counsel himself. He submits that past conduct can be considered for the purposes of terminating an employee as held in Boman v. P.O., Labour Court (2003) II LLJ 551 (Del) Labour Court.

Analysis & Findings

9. This Court has heard Id. counsel for the parties and perused the record.

The charge sheet, which was issued to the Workman on 30th July, 2015, lists the following allegations against the Workman:

- i) That the Workman was transferred from branch office 11 M, Shahdara to branch 11 L in Narela on 21st March, 2015. After taking relieving orders from his previous branch, the Workman did not join the new branch office or report there;
- ii) That the Workman remained absent from duty from 2nd April, 2015 without prior sanction or leave;
- iii) That the Workman was asked to report to the Personnel Department with his medical records on 24th April, 2015. Repeated notices were sent on 27th April, 2015, 6th May, 2015, 12th May, 2015 and 25th May, 2015 which were all ignored/refused and the Workman did not appear before the department concerned;
- iv) That on 3rd June, 2015 and 25th June, 2016, various letters were handed to

the Workman for taking over charge at the Narela branch but he did not accept the said letters;

v) In respect of the Workman's past conduct, the following incidents were cited in the charge sheet:

a) On 28th July, 2014, a departmental enquiry committee was constituted against him relating to charge sheet dated 3rd July, 2014, and in response to the said letter, he used intemperate language against senior officials:

"You are informed that you're (without name) S.D. M' s complaint has been sent to Zonal Office on 28.07.2014 for initiating Court proceedings. In future, you may give your personal appearance or from Department in the concerned court. You may not send me any letter in future regarding any action".

b) In respect of the charge sheet dated 3rd July, 2014, the Workman wrote a letter dated 4th October, 2014 to the Enquiry Officer threatening him with dire consequences:

"Your letters are not in your interest. In future you would have to face inconvenient court proceeding in the court."

He remained absent during the entire proceedings.

c) On 31st December, 2014, Workman was directed to report at the enquiry counter in at Branch 11- M, which he failed to obey. He in fact even refused to accept the letters.

d) On 15th January, 2015, the Head of the Branch called the Workman to hand over documents, which he refused to accept. Thereafter, show cause notice dated 15th January, 2015 was issued to him. He again wrote letter dated 16th January, 2015 to the Senior Divisional Manager again making various allegations:

"(1) It seems from your letter that you are leader of Class Association (2) it seems from your letter that you in order to take revenge for Sunil are making misuse of government position. (3) Your Photostat signed letter has been received by us. You, being placed on a competent post, are tarnishing the image of Corporation and not signing your original signature 12.01.2015? Why you have given Photostat copy of letter? (4) It is expected from you that you may sent reply to my letter otherwise your letter would be forwarded to police CBI and published in newspaper. Reply to your fabricated Photostat letter would be given at appropriate time. You may forward original letter."

e) Another letter dated 28th January, 2015 was served upon the Workman but after acknowledging the same, he cancelled the acknowledgment. This fact was admitted in a subsequent letter by the Workman.

f) Various complaints dated 7th March, 2015 and 20th March, 2015 were filed by the Workman against senior officials which were found to be false, baseless and wrong.

g) The Workman had written multiple letters raising allegations and misusing office stationery.

10. Admittedly, this charge sheet was served upon the Workman, who did not reply to the same. He also did not appear before the Enquiry officer. The charge sheet was followed by a show cause notice dated 12th January, 2016. The said show cause notice called upon the Workman to show cause as to why penalty should not be imposed upon him for violation of various Regulations which were applicable to him. The Workman did not participate or file a reply to the show cause notice. It was under these circumstances that the Workman's services were terminated on 23rd July 2016.

11. The final order of the Disciplinary Authority which was constituted to adjudicate the allegations in the charge sheet and the show cause notice records that the charge sheet was duly displayed on the notice board. The Workman also had sufficient notice of the said charge sheet. He refused to accept the letters repeatedly served upon him. An Enquiry Officer, who was appointed to conduct the enquiry submitted the enquiry report on 23rd January, 2016, and a copy of the same was sent to the Workman for his comments. The Workman then requested for a translated copy of the report and was supplied a Hindi copy. In response to the same, the Workman chose not to file any reply or objections. Letters in respect thereof were served upon the Workman, which he refused to accept. Thus, the Disciplinary Authority came to the following conclusion:

"...After careful examination of the entire case file, enquiry report, evidences adduced during the enquiry proceedings, the undersigned found the charges leveled against the charge sheeted employee vide Charge Sheet dated 30.07.2015 to be proved. Examination also establishes that the charge sheeted employee was accorded every opportunity to present his case. Thereafter as a last resort through "Show Cause Notice" dated 12.04.2016 under Regulation of 39 (1) (f) of provisions of Life Insurance Corporation of India (STAFF) 1960, the penalty of "Removal from Service" was proposed to be imposed upon the charge sheeted employee and the charge sheeted employee was directed that he may submit his reply within 10 days from the date of receipt of the aforesaid "Show Cause Notice".

And whereas the charge sheeted employee Shri Manmod Shankar refused from accepting Show Cause Notice dated 12.04.2016. The Show Cause Notice was sent at the residence of Shri Manmod Shankar at 13/624 Vaundhra, Ghaziabad, U.P 201012 by Registered A.D - A.R.D 615135473 I.N Dated 21.04.2016. The Show Cause Notice was also placed at the Notice Board in the presence of two witnesses Shri Alok Srivastav, Administrative Officer and Shri S.S.Nabiyal, Asstt. Admn. Officer on 21.04.2016.

And whereas the charge sheeted employees has not submitted any reply to the Show Cause Notice.

And whereas I being Disciplinary Authority am satisfied with the procedure

adopted by this office in conducting Disciplinary proceedings and the opportunity provided to the charge sheeted employee at every stage of the proceedings to defend himself.

And whereas after going through the entire records it is clear that Shri Manmod Shankar indulges in disobeying orders/directions of the officers/directions, creates obstacle in the working of office and wastes the time of office by leveling baseless and frivolous charges against Branch Office/Divisional Office and other senior officers.

Therefore, now being Disciplinary Authority, I understand that Shri Manmod Shankar was accorded opportunity at every stage to present his case but Shri Manmod neither ever obeys the office orders issued by this office nor receives them and also does not cooperate in any enquiry proceedings. Under the circumstances, I have come to the conclusion that all the charges leveled against Shri Manmod Shankar through Charge Sheet dated 30.07.2015 are proved and accordingly, I, being the Disciplinary Authority under Rule 39 (1)(f) of provisions of Life Insurance Corporation of India (Staff) Regulation 1960, impose the penalty of "Removal from Service" upon Shri Manmod Shankar."

Thus, the Disciplinary Authority, after assessing the conduct of the workman in detail, imposed the penalty of removal from service upon the Workman on 23rd July, 2016.

12. The Appellate Authority records that the Workman submitted his objections to the order of the Disciplinary Authority. The Appellate Authority dealt with all the arguments which were raised by the Workman and arrived at the following conclusion:

"From all the facts and evidences it is established that Enquiry initiated by Disciplinary Officer has been conducted as per rules. Principles of natural justice have been followed at every stage. So the penalty of Removal from Service (which would not have any effect on his future employment) has been imposed by the Disciplinary Authority upon Shri Manmod Shankar for the charges levied on him for which he has been found guilty. Therefore, I hereby order that the appeal filed by appellant Shri Manmod Shankar on 12.08.2016 and 13.08.2016 is dismissed.

13. The Workman then approached the Labour Court. Before the Labour Court, the following issues were framed:

"i) Whether termination of the claimant vide order dated 23.7.2016 by the management is wrong, illegal and against principle of natural justice?

ii) Whether the claimant is entitled to reinstatement with full back wages, as alleged?

iii) Whether the petition is not legally maintainable in view of various preliminary objections ?"

14. After hearing the parties and perusing the pleadings, the Labour Court came to the conclusion that the Workman was merely working as an Assistant performing clerical duties. He did not have supervisory or managerial position. He was removed from service on 23rd July, 2016. The Labour Court concludes that the enquiry was conducted in a fair and proper manner. The relevant extract of the order is set out below:

"...

10- It a matter of record that the claimant/workman was removed from service vide order dated 23/7/201, pursuant to the domestic enquiry conducted against him. Perusal of the record shows that this Tribunal vide detailed order dated 01/10/2018 has held the departmental inquiry was conducted in a fair and proper manner and that proper opportunity was given to the workman to defend himself and as such inquiry was conducted following the principles of natural justice."

15. The Labour Court thereafter notes that the unauthorised absence by the Workman was because he did not join the new branch office. The Labour Court holds that the punishment imposed ought to be commensurate with the gravity of alleged misconduct, and that the Disciplinary Authority should not be influenced with the previous conduct of the Workman. Accordingly, the Labour Court came to the following conclusion:

"...

16- It is settled law that punishment/penalty to be imposed by the Disciplinary Authority against the charged official ought to be commensurate with the gravity of alleged misconduct and the Disciplinary Authority should not be influenced with the previous conduct of the official, for which suitable penalty has already been imposed upon him."

16. However, while holding that the punishment was disproportionate, the Labour Court ordered reinstatement of service without any monetary benefits for the period between the termination and publication of the award. Both parties are aggrieved by the impugned order of the Labour Court.

17. The Workman is aggrieved by the fact that no monetary benefits have been given for the intervening period. The LIC is aggrieved by the fact that the Workman has been reinstated in service. On behalf of the Workman, reliance has been placed on the judgment of Deepali Gundu (supra) to argue that if there is either a camouflage created for victimizing the employee, or if the misconduct is petty in nature, he should be reinstated with the full back wages. It is further urged on behalf of the Workman that the reason why such proceedings were initiated against the Workman, was that he had repeatedly written letters against his superiors. A perusal of the judgement in Deepali Gundu (supra) shows that the Supreme Court has, therein, laid down the broad parameters for cases of this nature. The Supreme Court held:

"33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is

the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

18. Recently, in *Rajasthan State Road Transport Corporation Vs. Phool Chand* AIR 2018 SC 4534, the Supreme Court has reiterated the principles laid down in all the previous case law and in *Deepali Gundu* (supra). The Supreme Court observes:

"11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The

questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer *res integra*. These cases are, *M.P. State Electricity Board v. Jarina Bee (Smt.)*, (2003) 6 SCC 141, *G.M. Haryana Roadways v. Rudhan Singh*, (2005) 5 SCC 591, *U.P. State Brassware Corporation v. Uday Narain Pandey*, (2006) 1 SCC 479, *J.K. Synthetics Ltd. v. K.P. Agrawal and Anr.*, (2007) 2 SCC 433, *Metropolitan Transport Corporation v. V. Venkatesan*, (2009) 9 SCC 601, *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.*, (2009) 15 SCC 327) and *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors.*, (2013) 10 SCC 324.

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent."

19. It is thus the settled legal position that the Workman cannot claim award of back wages in all cases. Several factors such as nature of misconduct are to be considered by the Court. In every case, upon reinstatement, payment of back wages is not a matter of right.

20. It is also the settled position in law that past conduct can be taken into consideration in order to adjudge whether the punishment meted out to the Workman is justified or not. The present is not a mere case of unauthorised absence for a few months due to a justified medical cause. It is much more. In fact, the Workman has defeated his own cause by not appearing before the concerned authorities and justifying his absence.

21. Ld. counsel for the Workman vehemently urged that this is a case of victimization, and the charge sheet is merely a camouflage for the same. The record does not support this argument, as the case has been considered at various levels within the LIC and this clearly does not appear to be a case of victimization. The language used, by the Workman in various letters is quite intemperate and unbecoming to say the least. Unnecessary statements are made in the communications addressed to the Superior Officials and in some letters, the language is even intimidating. In one of the letters the workman also threatens one of the officers that he would send the communication to CBI and even to the newspapers. The allegation of victimisation is thus not made out.

22. While there is no doubt that the Workman has been in employment of LIC since 1989, the same cannot justify the conduct which the Workman has showed. As held in *Deepali Gundu (supra)*, while considering the award of back wages, the nature of misconduct of the workman would have to be considered. The workman in this case was not employed during the intervening period and that position is no longer disputed. The discretion to ultimately award back wages or not, including full back wages or partial back wages ultimately vests with the labour court. In writ jurisdiction under Art 226, this Court cannot

interfere with the same, simply because it can form a different opinion.

23. The Labour Court has finally come to the conclusion that termination, owing to the long service of the Workman would not be proportionate, and has accordingly balanced the relief granted to the Workman. The Supreme Court in *LIC v. R. Dhandapani* (2006) 13 SCC 613 held that continuous misconduct and a pattern of defiance ought not to be justified. In fact, in paragraph 7 of the said judgment, the Supreme Court holds that mere use of the words 'disproportionate' or 'grossly disproportionate' by the Labour Court is not sufficient, and unnecessary sympathy cannot be shown to the Workman. The relevant portion of the judgment is extracted below:

"7. It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under the said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of the management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words "disproportionate" or "grossly disproportionate" by itself will not be sufficient.

8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy and benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the legal system of its dignity, authority, predictability and respectability. (See *Kerala Solvent Extractions Ltd. v A. Unnikrishnan*. (2006) 13 SCC 619)

9. Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law."

24. It is in view of the long tenure of the Workman that the Labour Court has reinstated him but without monetary benefits for the intervening period.

25. In the backdrop of the above legal position, this Court has perused the initial charge sheet, the show cause notice as also the order of the Disciplinary Authority, the enquiry report and the order of the Appellate Authority. The

enquiry report and the orders of the Disciplinary Authority and the Appellate Authority are detailed in nature. They clearly reflect upon the complete lack of discipline on behalf of the Workman, who has not merely absented himself from duty but has continuously exhibited lack of any adherence to the discipline required for working in an organization like LIC. While mere absence due to medical grounds may not justify termination of an employee, there has to be some conduct on behalf of the Workman to show that he bonafidely placed his case before the management. A perusal of the above documents shows that all along, the Workman has demonstrated a rebellious or a non-cooperative attitude. He has refused to appear, initially before the Personnel Department to justify his absence on the basis of medical records. He has also failed to appear before the Enquiry Officer or the Disciplinary Authority. The Workman has repeatedly avoided service of letters. The record is replete with reminders after reminders being issued to the Workman. He has refused to acknowledge them, and on some occasions given an acknowledgment which he has thereafter cancelled. It is apparent upon a perusal of the record that the employer was almost forced to take such actions against the Workman, owing to the continuous non-cooperative attitude and indiscipline and violation of various service conditions. The charge sheet is not merely based upon past conduct for which the Workman was already punished. The charge sheet has set out the various grounds which were taken into consideration for constituting an enquiry against the Workman.

26. All the allegations raised against the Workman were duly communicated to him and there is no violation of the principles of natural justice in this case. The Workman has selectively chosen to participate in the proceedings, but has on most occasions refused to participate, while fully being aware of the proceedings. A workman cannot claim back wages as a matter of right as held in *Rajasthan State Road Transport Corporation (supra)*. While the long tenure of the workman has resulted in his reinstatement, owing to his past conduct, the labour court has rightly held that he would not be entitled to back wages. Under such circumstances, the Labour Court's order which directs reinstatement on such terms and conditions as it thinks fit, as has been done in the present case, is fully justified and does not warrant any interference.

27. Both petitions are dismissed with no orders as to costs. All monetary benefits to the Workman in terms of the Labour Court's order be released within a period of six weeks.