
(1997) 01 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11090 of 1991

Maheshwar Rao P.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1997) 1 ALT 326

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Judgement

1. This Writ petition filed by the workman is directed against the award dated October 24, 1990 passed by the Labour Court, Godavarikhani in Industrial Dispute No. 227/90 dismissing the industrial dispute.

2. The petitioner joined the services of the Andhra Pradesh State Road Transport Corporation in the year 1987. On August 22, 1989 he was conducting the bus on the route Mancheri-Jannaram. The Officials of the checking squad of the Corporation exercised a check at stage No. 8/9 and detected certain cash and ticket irregularities and reported the matter to the second respondent Depot Manager who is the disciplinary authority, under the Regulations. The disciplinary authority, not being satisfied with the spot explanation offered by the 5 petitioner, thought it fit to initiate disciplinary proceedings against the petitioner. Accordingly a charge memo was issued to the petitioner. The following are the charges :

"(1) For having violated the rule "issue and start".

(2) For having already collected each Rs. 1.25 p from a batch of (8) passengers who were found alighting without tickets at Muthyampet stage. No. 8/9, having boarded the bus at Luxettipet stage No. 7 and hence confronted the ticketless passengers to you at the time of check and obtained T. P. Tickets.

(3) For having already closed the ticket tray No. of all denominations against

stage No. 8 without completing the above issues."

3. The inquiring authority appointed by the disciplinary authority conducted an enquiry as per the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 and recorded the finding that all the three charges are proved. The disciplinary authority after consideration of the findings recorded by the inquiring authority and taking into account the totality of the facts and circumstances of the case thought it necessary to remove the petitioner from service. Accordingly the disciplinary authority passed an order on December 29, 1989 removing the petitioner from the service as a disciplinary measure. The appeal filed by the petitioner was dismissed by the appellate authority on March 24, 1990. There after wards the petitioner instituted Industrial Dispute No. 277/90 before the Labour Court, Godavarikani. The learned Presiding Officer after reappraisal of the entire evidence on record came to the conclusion that all the charges are satisfactorily proved. The learned Presiding Officer also examined whether the penalty imposed by the disciplinary authority, in the facts and circumstances of the case, was justified or not and he did not find any extenuating or mitigating circumstances to award a lesser punishment. In that view of the matter the Labour Court dismissed the industrial dispute by the impugned award. Hence this writ petition by the workman.

4. Sri A. K. Jayaprakash Rao, the learned counsel for the petitioner contended

(i) that the rule "issue and start" is only directory and not mandatory;

(ii) that the findings recorded by the inquiring authority, the disciplinary authority and the Labour Court that the petitioner was guilty of the charges are based on "no evidence" but on surmises and conjectures;

(iii) that the Labour Court has seriously erred in law in holding that the malafide intention of the petitioner was writ large and manifest in not issuing the tickets to 8 passengers thereby suggesting that the petitioner wanted to misappropriate the fares collected by him, and by so holding the learned Presiding Officer has made out a new case for the disciplinary authority; and

(iv) that at any rate the penalty imposed on the delinquent is highly excessive and disproportionate to the gravity of the misconduct and particularly having regard to the alleged quantum of amount misappropriated being only Rs. 10/-.

5. On the other hand Smt. A. Vyjayanthi, the learned counsel for the A.P.S.R.T.C. supported the impugned award.

6. The contentions now raised by Sri A. K. Jayaprakash Rao are quite often repeated by the learned counsel in assailing the validity of the awards passed by the Industrial Tribunals and the Labour Courts. In similar facts-situation, in some cases reliefs were granted and in the others reliefs were refused by this Court. Therefore, I thought it necessary to peep into the legal foundations of the arguments of the learned counsel for the workman in some detail to achieve a

manageable consistency without sacrificing individual justice.

7. The first contention of Sri A. K. Jayaprakash Rao is not acceptable to the Court. In *T. Sudershan Vs. The Labour Court and Others*, I have held that the rule "issue and start" is not directory, but mandatory. The failure to adhere to this rule, to begin with, was not treated to be a misconduct under Regulation 28 of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 for short "the Conduct Regulations". The Corporation inserted clause (vi) in Regulation 28 by way of amendment through resolution 53/1980 dated February 27, 1980 and the same was notified through circular No. P1/144(3/79-PD dt. July 9, 1980. Clause (vi)(a) reads :

(vi)(a) "Failure on the part of conductor/Booking clerk to issue valid passengers/luggage ticket, in accordance with the order passed by the Corporation or any other authority under the Corporation from time to time before starting or allowing a bus to be started from the point "where such passenger/luggage, boarded or loaded as the case may be in respect of mofussil services, and before passing a Ticket Issue Completion Point, fixed from time to time in respect of City/Town Services."

8. This clause embodies the rule "issue and start". Before this rule was introduced in the year 1980, the learned standing counsel for the Corporation states that whenever check was exercised by the officials of the checking squad, the conductors used to open the ticket trays and claim that they were very much in the process of issuing the tickets, and but for the check they would not have issued the tickets to the passengers and in this process the Corporation used to suffer heavy losses, and in the back-drop of this experience the Corporation thought it necessary to amend Regulation 28 treating violation of the rule "issue and start" to be a distinct head of misconduct. If the conductors are required to be honest to their employer and the Corporation commands that the Conductor should adhere to this rule keeping in mind the best interest of the Corporation, the Court cannot say that the rule is only directory and not mandatory. Unless this rule is insisted, there is every possibility for the unscrupulous conductors to misappropriate the revenue of the Corporation. Therefore, I hold that the rule "issue and start" is a mandatory rule. However, while taking this view, I am quite conscious of situations wherein it may be totally irrational for the Corporation to insist that the rule should be adhered at all times and circumstances without any exception. For example, if a group of gangsters fully armed with weapons board the bus at a stop and administer threat or violence and direct the crew of the bus to move the bus without purchasing the tickets, and under such threat if the conductor allows the bus to be started and moved, the Corporation will not be justified in punishing such conductor for the violation of the rule. In such situation and the like, the concerned conductor can always explain the situation and no reasonable disciplinary authority in the Corporation would initiate disciplinary proceedings against such conductor. In other words, this rule may be breached only under extraordinary and unavoidable circumstances where the

insistence of the rule would cause danger to the crew and the passengers, and not otherwise. In the present case, the petitioner admittedly violated this rule and no extraordinary or unavoidable situation existed to breach the rule. Therefore, it should be held that the petitioner is guilty of misconduct specified in clause (vi)(a) of Regulation 28 of Conduct Regulations.

9. There is no merit in the second contention of the learned counsel for the petitioner. This contention was put forth by the learned counsel quite meekly without elaborating how the findings recorded by the inquiring authority, the disciplinary authority and the Labour Court on the charges are based on surmises and conjectures. Three charges are framed against the petitioner. The first charge relates to violation of the rule "issue and start" Admittedly, this rule was breached by the petitioner and therefore the finding recorded on that charge is fully justified. The second charge relates to non-issue of tickets to eight passengers despite collection of fares from them. In recording the finding on the second charge, the inquiring authority, the disciplinary authority and the Labour Court have placed reliance on Ex. M-2 which is the statement of the passengers. In that statement, the passengers have stated that they boarded the bus at Luxettipet, i.e., Stage No. 7 and the petitioner collected the fares at the place of boarding itself. The self-serving statement of the petitioner that he did not collect the fares was disbelieved on the face of the statement of the passengers, the spot explanation of the petitioner and also having regard to the fact that the petitioner had already closed the ticket tray numbers of all denominations against stage No. 8. In Ex. M-3 which is the spot explanation of the petitioner, the petitioner states : "I do not know whether I have collected the fares or not from the eight passengers. "Having regard to the "fence-sitting" stand taken by the petitioner in Ex. M-3, the statement of the passengers and the fact that admittedly the petitioner had already closed the ticket tray numbers of all denominations against stage No. 8, it cannot be said that the findings recorded by the inquiring authority, the disciplinary authority and the Labour Court are not based on evidence. The findings are based on acceptable substantial evidence. It is quite often reiterated by the Apex Court and the High Courts that the High Courts, while reviewing the awards of the Industrial Tribunals and the Labour Courts, cannot go into the question of adequacy or inadequacy, sufficiency or insufficiency of the evidence on the basis of which the charges are held to have been proved, and if they find that the findings are grounded on some substantial acceptable evidence, the findings cannot be upset. The High Courts in exercise of their powers under Article 226 of the Constitution cannot reappreciate evidence and record a finding on a question of fact different from the one recorded by the Industrial Tribunals and the Labour Courts even in a case where two views are possible from the same evidence. Reappraisal of evidence is the power of the Industrial Tribunals and the Labour Courts, and not of the High Courts. The Supreme Court in *H. B. Gandhi v. Gopi Nath and Sons* in para 8 observed :

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of

the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

A Division Bench of this Court in the *The Depot Manager, APSRTC Vs. P. Gangarajulu and Another*, speaking through B. Sudershan Reddy, J. held that the High Court in its certiorari jurisdiction cannot act as an appellate authority and it cannot review or re-weigh the evidence and the High Court can interfere only in a case where the finding of fact recorded by the Industrial Court is based upon surmises and conjectures. The findings of fact can be upset by the High Courts is applying only on "no evidence" rule and not otherwise. "No evidence" rule can be applied only in a case where a finding of fact is based upon purely and solely on inadmissible evidence like surmises, conjectures; and guesses etc. No case to is made out to interfere with the findings recorded by the inquiring authority, the disciplinary authority and the Labour Court on questions of fact.

10. The argument of the learned counsel for the petitioner that the observation of the Labour Court that the mala fide intention of the petitioner was writ large and manifest in not issuing the tickets to 8 passengers tantamounts to making out a new case for the disciplinary authority is a misconceived argument. In the decisionmaking process, the quasi-judicial Tribunals and the Courts are entitled to draw inferences, from the proved facts. This power of inference and the power of probability are integral arts of the decision-making by the quasi-judicial Tribunals and agencies, and the Courts. The aforementioned observation of the learned Presiding Officer of the Labour-Court, therefore, is the outcome of the exercise of those powers, and he only inferred the existence of malafide intention on the part of the petitioner from the proved facts referred to above. The other aspect of the argument is that misappropriation is not the charge against the petitioner. The fares collected from eight passengers but not accounted in the ticket tray sheet were meant for what ? Was it for charities ? Even if it was meant for charities, nevertheless, it would be misappropriation. One can practise charities out of his own money and not out of the monies legitimately belonging to the Corporation. In appreciating the evidence in a case like this the Industrial Tribunals and the Labour Courts cannot keep their common sense in Cold storage. The motive behind the alleged and proved misconduct is quite apparent, and "writ large", to use the expression of the learned Presiding Officer of the Labour Court. Therefore, the learned Presiding Officer is fully justified in drawing the inference.

11. Before appreciating the fourth contention of the learned counsel for the petitioner, it is apt to advert to the nature and the expected quality of services of

a Conductor in the Corporation. Although the post of Conductor in the services of the Corporation is a Class or Grade III post, the importance of this post cannot be underestimated. It cannot be gainsaid that the Corporation collects its major revenue, through the conductors. The Conductors in the Corporation are the Collectors of the revenues of the Corporation. Therefore, the Corporation expects absolute integrity and accountability from them. They are trusted and put in the buses alone with the expectation that they do discharge their duties honestly, collect the prescribed fares from each and every passenger, and that the collected fares would be faithfully credited to the accounts of the Corporation. Trust, honesty, diligence should be the hallmark of the occupier of the post of conductor. Every conductor is a trustee of the monies of the Corporation. If this trust is breached, the confidence of the Corporation in the concerned conductor shatters, and the Corporation will never again repose full confidence in him having regard to the propensity of the conductor to breach the trust. If the breach of the trust is on account of inadvertence or innocent act of the conductor, the Corporation may condone the lapse and still repose confidence in him, but if the breach of trust is on account of deliberate and mala fide act of the conductor, the Corporation will never trust him again.

12. Generally speaking, any conduct on the part of the employee inconsistent with the faithful discharge of his duties towards his employer would be misconduct. A duty will be implied in every contract of employment that the employee will serve honestly and faithfully and this duty may be amplified or extended by express terms. One of the basic requirements of what an employer would expect to be satisfied from an employee is loyalty towards him. In modern times, cases of misconduct are enumerated in the Certified Standing Orders or Service Rules or Regulations of the companies or the authorities. *Lopes, L.J. in Pearce v. Foster 1986 (17) Q.B.D. 536* commenting upon the effect of misconduct on the relation of the employment said :

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duties in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

In the same case Lord Esher, M.R. observed :

"The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him ... What circumstances will put a servant into the position of not being able to perform, in a due manner, his duties, or of not being

able to perform his duty in a faithful manner, it is impossible to emumerate. Innumerable circumstances have actually occurred which fall within the proposition and innumerable other circumstances which never have yet occurred, will occur, which also will fall within the proposition. But if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his master; and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted the master may dismiss him."

13. These observations were cited with approval by the Supreme Court in *Govinda Menon Vs. Union of India (UOI)*, and by a Division Bench of Bombay High Court in *Madhosingh Daulatsingh Vs. State of Bombay*, . What is emphasized in these observations is the faithful, trustworthy discharge of duties by an employee towards his employer. In other words, faithfulness and trustworthiness are the basic duties of any employee towards his employer. The rationale behind this duty is not far to seek. Employment is a relationship and like any other relationship it is grounded on faith and trust. If there is a breach in this duty, it will be a serious misconduct warranting "immediate dismissal", to repeat what *Lopes L.J.* said. If breach of such duty also touches upon moral turpitude of "employee" the such breach was always considered to be an aggravated form of misconduct warranting imposition of a relatively severe punishment. Such view has been expressed by the Courts consistently in a line of decisions. In *Sinclair v. Neighbor* 1967 (2) Q.B. 279 it was held that the conduct of a workman, in handling his employer's property, which indicated that he was unfit for position of trust and confidence, justified the employer in dismissing him. In *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, the Supreme Court justified the action of the employer in dismissing a workman for stealing a bicycle of a co-workman. In *Ruston and Hornsby (I) Ltd. Vs. T.B. Kadam*, the Supreme, Court held that even an attempt to steal the employer's property on the part of the workman who was a watchman was a serious charge and deserved nothing short of dismissal and the Labour Court was not justified in interfering with the punishment in the circumstances of the case. The Supreme Court, in *Tika Ram and Sons Ltd. Vs. Its Workman (Bishamber Dayal)*, held that the acts of dishonesty or fraud constitute misconduct of serious nature warranting the penalty of dismissal. In *Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another*, , the misconduct committed by the workmen was subversive of discipline, and therefore the Supreme Court found fault with the High Court of Karnataka in ordering reinstatement of the workmen. In *Municipal Committee, Bahadurgarh Vs. Krishan Behari and others*, , the Supreme Court while dealing with a case of misappropriation held that in cases involving corruption, there cannot be any other punishment than dismissal and any sympathy shown in such cases is totally uncalled for and opposed to public interest. Similar view was expressed by the Supreme Court in *State of T.N. v. K. Guruswamy*, (1996) 7 SCC 114) .

14. What emerges from those decisions is that the first duty of an employee is to

be totally honest, faithful, trust-worthy towards his employer. Every employee is expected to behave himself so as to not to damage or prejudice the interests or reputation or properties of his employer, whatever be the sphere of the employee. This basic duty is cast on the employee throughout his employment. Acts of embezzlement, fraud, dishonesty, breach of trust, corruption, misappropriation, falsification of accounts and the acts involving moral turpitude are considered to be misconduct of serious nature warranting dismissal or removal from service. When an employee indulges in such misconduct of serious nature, the Courts cannot show sympathy to such employee, and if it shows, it would be a misplaced sympathy and totally against the public interest. In the back-drop of these well-established principles governing quantum of punishment to be awarded to a delinquent in disciplinary proceedings, let me now consider whether the Labour Court is justified in not granting any relief to the petitioner.

15. The law obtaining prior to insertion of Section 11A into the Industrial Disputes Act, 1947 by the Industrial Disputes (Amendment) Act, 1971, with effect from December 15, 1971 relating to the scope of the powers of the Labour Courts and the Industrial Tribunals to review findings of fact and the punishment imposed by the disciplinary authorities are succinctly stated by the Supreme Court in para 5 of the judgment in *The East India Hotels Vs. Their Workmen and Others*, . It reads :

"In the undoubted exercise of the right of the employer to take disciplinary action, and to decide upon the quantum of punishment, a 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 in 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, reapi praise 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 employee to adduce evidence for the first time justifying his action; and it is open to the employer 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."

16. After the insertion of Section 11A, two special powers, viz., (i) power of reappraisal of evidence, and (ii) power to consider whether the penalty of dismissal or discharge imposed by the employer as a disciplinary measure is justified or not, have been conferred on the Labour Courts and the Industrial Tribunals. If the penalty imposed by the employer is found to be unjustified, then, the Labour Courts and the Industrial Tribunals are armed with power to set aside the penalty and direct reinstatement of the workmen on such terms and conditions as they think fit, or grant such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal. In *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, the Supreme Court held that Section 11A applies only to disputes which are referred for adjudication after the Section came into force because it has the effect of altering the law laid down by the Supreme Court in its earlier pronouncements in this respect by abridging the right of the employer inasmuch as it gives power to the Labour Courts and the Industrial Tribunals for the first time to differ both on a finding of misconduct arrived by an employer as well as the punishment imposed by him. The Supreme Court in *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, while dealing with the scope of the powers of the Labour Courts and Industrial Tribunals u/s 11A, in para 14 of the judgment observed :

"Section 11A which has been introduced since then into the Act which confers the power on the Industrial Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal passed by the management again 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 the management under Section-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. The decision of the Industrial Tribunal or the Labour Court is again, as already said, subject to Judicial review by the High Court and this Court."

The power of the Industrial Tribunal or the Labour Court under the Industrial Disputes Act is not uncanalised, unguided and unlimited. It cannot, therefore, be said that the Industrial Tribunal or the Labour Court will function arbitrarily and interfere with every decision of the management as regards dismissal or discharge of a workman arrived at in a disciplinary enquiry.

17. All the charges against the petitioner are satisfactorily proved. The second charge is of very serious nature touching upon the moral turpitude of the petitioner. Despite collection of the fares from 8 passengers at the boarding place itself, the petitioner did not issue tickets and he had also closed the entries in the ticket tray sheet. The motive behind the act is apparent. The petitioner wanted to

misappropriate the revenue of the Corporation. As noted above, in the cases of misappropriation or corruption as held by the Supreme Court in *Municipal Committee, Bahadurgarh's case* (supra) and in *State of Tamil Nadu and others'* case (supra), the appropriate punishment is dismissal and nothing else. Corruption, bribery, extortion, misappropriation are not strangers to each other; they are siblings and they belong to the same family, the family of the depraved and the debased. The word "Misappropriate" means "to put to wrong use"; "to take dishonesty for one self". Corruption is an act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. Therefore, misappropriation is a form, of corruption. The charges proved against the petitioner warrant his dismissal. But luckily for the petitioner, he was not dismissed but he was only removed from service.

18. However, Sri A. K. Jayapraksh Rao, the learned counsel for the petitioner would contend that the money involved was only Rs. 10/-, a pittance, a trifle and therefore the imposition of penalty like removal from service could not be justified. The learned counsel places reliance on the decisions of this Court in *J. Venkata Sub-biah v. The Labour Court, Ananthapur* and another 1991 (1) An. WR. 610, *G. V. M Reddy v. APSRTC* 1994 II LLJ 861 and *P. Balachandra Reddy Vs. Depot Manager, Andhra Pradesh State Road Transport Corporation, Anantapur and Others*, in support of his contention. All these three decisions are by the learned single Judges of this Court and they are in no way helpful to the petitioner in view of the law declared by the Apex Court in the cases noted supra. The reading of these three judgments indicates that the quantum of amount misappropriated was taken into account by the learned judges and the penalty imposed by the employer was reduced not only on the ground of small sums of money involved in the cases but also taking into account all the attending facts and circumstances of the cases. In none of these decisions, I find any categorical statement of law in the form of a ratio disdained declaring that the quantum of amount misappropriated should invariably go into the decision making as a relevant fact to find out an appropriate penalty. It may be noted that the Supreme Court in *Municipal Committee, Bahadurgarh's case* (supra) dealing with misappropriation case held that in determining the quantum of punishment what is relevant is the act of misappropriation, and not the quantum of amount misappropriated. In the *Depot Manager, A. P. S. R. T. C Kamareddy Depot v. K. Angiah* and another W.A. No. 773/89, dated January 15, 1990 the first respondent therein was conductor in the APSRTC and he was dismissed from service after holding a departmental enquiry on the charge that he, despite collection of fares, did not issue tickets to certain passengers. The Industrial Dispute instituted by him was dismissed by the Labour Court. The validity of the award was assailed by him in a writ proceeding. It appears that before the learned go single Judge of this Court he contented that having regard to the quantum of money involved, the management was not justified in imposing the extreme penalty of dismissal. The contention of the workman found favour with

the learned Judge, and accordingly the learned Judge set aside the award of the Labour Court and directed the Corporation to appoint the workman afresh as conductor. The correctness of the order of the learned single Judge was assailed in the Writ Appeal by the Corporation. The Division Bench of this court while allowing the appeal observed :

"The charge, as has been noticed, was of collecting fares from passengers and not issuing tickets to them thereby committing embezzlement of the funds due to the Corporation. The charge is not merely of embezzlement of amount but also involves the nature of the person on duty. The duty here is that of a conductor. The duty of the conductor was to collect fares and issue tickets to passengers, but not to indulge in collecting money without issuing tickets to passengers. Such an indulgence is a worst conduct on the part of the employee. Such a conduct cannot be called an insignificant charge of misconduct. It is clear case of gross misconduct on the part of the employee concerned. It cannot be styled as an insignificant charge of misconduct, nor can there be a direction by this Court for reappointing the workman or for an appointment afresh. Such a direction cannot be issued in exercise of power under Article 226 of the Constitution of India"

This decision of the Division Bench which was delivered on January 15, 1990, it seems, was not brought to the notice of the learned single Judge in the aforementioned three cases. On facts also, those three cases can be distinguished. Be that as it may, I am bound by the law declared by the Supreme Court and therefore, I do not find any necessity to delve further into those decisions.

19. In the context of employment of a conductor in the Corporation and the duties and functions attached to the post of the conductor, the quantum of embezzlement or misappropriation cannot be a relevant consideration. There is absolutely no scope for any conductor to misappropriate the revenues of the Corporation in hundreds or thousands at a time. When a check is exercised on a particular day and at a particular stage, the checking officials may only detect the ticket and cash irregularities committed by the conductor within the few stages preceding the stage at which the check is exercised. Such detection may reveal misappropriation of few rupees only. I can take judicial notice of the fact that in hundreds of cases decided by this Court involving misappropriation of the revenues of the Corporation by its conductors, the money involved was always only few rupees and in most of the cases it was less than Rs. 10/-. Therefore the quantum of amount misappropriated at a particular stage cannot be a safe and reasonable yardstick to determine the quantum of punishment. What is material and relevant is whether the complained act of the conductor reflects a propensity to be corrupt and dishonest. If the conductor's conduct reflects such objectionable trait, then, it can reasonably be expected that he would translate this propensity to be corrupt into an act whenever and wherever he gets an opportunity to do so and thereby causing heavy losses to the Corporation. It is

not that a watchdog or a checking official accompanies every conductor at all times and all places during his service. A check in respect of a conductor may be exercised once in a month or few months. It is not that the Corporation conducts checks every day in respect of each and every conductor employed by it. If the Industrial Tribunal or this Court is satisfied about the propensity of the delinquent to be corrupt, it cannot grant relief to him solely on the ground that the misappropriated amount of money is only few rupees, and if they direct reinstatement of such delinquent, it will be totally against public interest and it will also have a demoralising effect on the administration of the Corporation. It will also aid generation of black-money. The Courts, whether it is Industrial Court or this Court, cannot be abettors.

20. The Learned Presiding Officer of the Labour Court, has reviewed the penalty imposed by the Corporation in exercise of his discretion ary power under Sec. 11A of the Industrial Disputes Act, and after referring to the facts and circumstances of the case, he has stated that he did not find any extenuating or mitigating circumstances warranting imposition of lesser punishment. It is well-settled that the discretionary orders passed by the Labour Courts and the Industrial Tribunals should not be interfered with lightly by the High Courts though what the Industrial Tribunals and the Labour Courts may, in their discretion, do under Sec. 11A of the Industrial Disputes Act, the High Courts too, under the Article 226, can, if facts compel, do as held by the Supreme Court in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, . Since Writ Court is not an appellate Court where the correctness of the order or award under review is to be canvassed, it has no jurisdiction to substitute its own opinion for the opinion of the inferior Tribunal even if it is satisfied that the decision is wrong. In other words, the writ Court will not probe into the merits of the exercise of discretion of an authority unless the exercise of the discretion is perverse. Every wrong order cannot be quashed merely because it is wrong. It can be quashed by certiorari or injected by prohibition, only if it is vitiated by some fundamental flaws such as violation of the fundamental rights, jurisdictional failures, violation of the rules of natural justice, errors of law apparent on the face of the record and perversity resulting in gross miscarriage of justice. In the present case, no such grounds are made out. The learned Presiding Officer of the Labour Court has exercised his discretionary power u/s 11A of the Industrial Disputes Act judiciously and has given valid and cogent reasons not to grant any relief to the petitioner. The penalty imposed by the disciplinary authority, in the facts and circumstances of the case, is fully justified. There is no failure of justice.

21. It is true that the whole body of enacted labour laws lean towards the workmen. But this leaning is meant to foster and protect the legitimate rights and interests of the workmen. Leniency cannot be deduced from this statutory leaning to foster the traits of the depraved and the debased elements in the community of workmen. Cleansing of the weedy of the Corporation by uprooting the unscrupulous and corrupt elements in the work force has become

absolutely necessary to sustain the economic health of the Corporation and to maintain its expected image in the eyes of the public. If the Corporation wants to do it honestly and seriously, the Courts shall not be obstructive.

22. In the result, I uphold the award of the Labour Court and dismiss the writ petition with no order as to costs.