

(2005) 07 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 44244 of 1999

Mohd. Anis S.

APPELLANT

Vs

Management of Indian Overseas Bank

RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 248 (1)
Industrial Disputes Act, 1947 — Section 11 A
Penal Code, 1860 (IPC) — Section 408, 420

Citation : (2005) 3 LLJ 804

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : S.G. Hegde, for the Appellant; K. Kasturi, for Kasturi Associates, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The petitioner was initially appointed as temporary sub-staff in June 1972 and later on worked on probation and confirmed. On May 23, 1985 he was working as Shroff/Godown keeper in the respondent- bank at its Dasanakoppa branch. He was served with a charge sheet as per Annexure-A, accusing him of not accounting for a sum of Rs. 600/- which was paid to him by one Mr. Guttappa, sub-staff. The amount was paid towards Recurring Deposit instalment on behalf of one A.S. Bhusanurmah and he did not make necessary entries in the accounts of the bank. Similarly, he was also accused of misappropriating IRDP Small Loan in a sum of Rs. 1000/- granted to one Karimsab Madarsab Eligar by drawing the money from his account. In the charge sheet, the particulars of the allegations are clearly set out. Subsequently, on August 9, 1986 an amendment was made to the charge sheet accusing him of forgery of withdrawal slip dated February 25, 1985 on the basis of which the amount was withdrawn from the account of Mr. Karimsab Madarsab Eligar. The petitioner did not give reply to the said charge sheet. Therefore, the respondent bank initiated an enquiry against the petitioner.

2. The petitioner was represented by a co-worker. On behalf of the management ten witnesses were examined. As there was no Presenting Officer appointed on behalf of the respondent the Enquiry Officer himself conducted the enquiry. Though an opportunity was given to the petitioner he did not adduce any evidence. Thereafter, the Disciplinary Authority on appreciation of the entire material on record held that the misconduct alleged against the petitioner stands proved. Accordingly he passed an order dismissing the petitioner from service by his order dated December 8, 1987.

3. The respondents had also filed a complaint against the petitioner accused with the jurisdictional police. The Circle Inspector of Police, Sirsi Circle, had filed a charge sheet against the petitioner for the offences punishable under Sections 420 and 408 of Indian Penal Code accusing the petitioner, that while he was in service as Cashier at Dasanakoppa Branch of Indian Overseas Bank he got the signature of the account holder on a blank cheque and misused the same by withdrawing the amount of Rs. 600/- from the account of the customer on February 25, 1985 and that he had misappropriated the said amount for himself and thereby deceived the account holder at Dasankoppa. The said criminal case was registered as CC No. 4/1993 on the file of the Principal JMFC, Sirsi. After contest, the learned Munsiff held that the prosecution has utterly failed to prove the guilt against the accused person and on the other hand the contradictions, infirmities and inconsistencies and lacunae on the part of the Enquiry Officer leads to a series of doubts and suspicion in the mind of the Court about the role played by the accused person as alleged against him and hence by extending the benefit of doubt to the accused the learned Judge acquitted the petitioner u/s 248(1) Cr.P.C. for the offence punishable u/s 408 Indian Penal Code, by his order dated September 2, 1996.

4. In that background, the petitioner challenged the order of dismissal by raising an industrial dispute. The conciliation having failed the Central Government referred the dispute for adjudication to the Central Government Industrial Tribunal-cum- Labour Court, Bangalore. The said reference was numbered as CR 23/90. Before the Tribunal, the petitioner filed his claim statement contending that the domestic enquiry conducted is not fair and proper; the material on record do not establish the misconduct alleged against him and at any rate, the punishment of dismissal was grossly disproportionate to the gravity of charges levelled and proved against him. The respondent-bank filed a detailed counter denying the said claim. In view of the aforesaid pleadings, the Labour Court framed preliminary issue regarding the validity of the domestic enquiry. The parties adduced evidence. The Labour Court on appreciation of the material on record, by a considered order on July 16, 1999 held that the domestic enquiry conducted is fair and proper. Thereafter, it proceeded to consider the case on merits. It also considered the fact of acquittal of the petitioner in the criminal case on similar charges. Thereafter, it recorded a finding that the misconduct alleged against the petitioner is proved. It held that there is not perversity in the finding recorded by the Disciplinary Authority and having regard to the gravity of

the charges proved against the petitioner no case for interference u/s 11-A of the ID Act is made out. Therefore it rejected the reference by its award dated September 3, 1999. Aggrieved of the said award of the Labour Court the petitioner has preferred this writ petition.

5. The learned Counsel appearing for the petitioner assailing the impugned award contended as under:

i) In the instant case, the Disciplinary Authority himself conducted the enquiry. In the absence of a Presenting Officer he has acted as a Prosecutor also, by examining the witnesses on behalf of the respondent in examination-in-chief; he has marked the documents on behalf of the respondent and therefore, the entire enquiry conducted by him is vitiated on account of bias and therefore, the finding recorded by the Labour Court that the domestic enquiry was valid and proper is vitiated.

ii) The complainant on whose complaint the charge sheet was issued to the petitioner was not examined, which is fatal to the entire enquiry and the case of the respondent. This aspect of the matter has been overlooked by the Labour Court.

iii) On the same set of charges the criminal prosecution had also been launched against the petitioner where he has been honourably acquitted and therefore in view of the settled legal position the Labour Court ought to have quashed the entire enquiry and the report as it was contrary to the findings recorded by the criminal Court.

iv) The disputed handwriting and the signature were referred to the forensic examination and the report was submitted. A copy of the report was not furnished to the petitioner and the said forensic expert was not examined, the petitioner had no opportunity to cross-examine the said person and therefore the Disciplinary Authority could not have acted on the said report, which factor also had been ignored by the Labour Court while holding that the misconduct is proved.

v) Lastly, he submitted that even if it is held that the finding recorded by a criminal Court is not binding in a domestic enquiry, the factum of acquittal is certainly a factor to be taken note of by the Labour Court while exercising his power u/s 11-A of the Act, which has not been done. Therefore he submits that the impugned award of the Labour Court requires to be quashed.

6. Per contra, the learned Counsel appearing for the respondent contended that this is case where the Disciplinary Authority himself has conducted the enquiry. In spite of it after the report was prepared a notice was issued along with a copy of the report calling for the explanation of the petitioner which was superfluous. In the absence of a Presenting Officer, in law, there is no prohibition for eliciting information from the management witnesses and marking documents and as the entire case is based on documentary evidence it cannot be contended that the

Enquiry Officer also acted as a Prosecutor in the case as contended by the other side. Insofar as the non-examination of the complainants are concerned, the enquiry and finding is not vitiated on that account because the charges levelled against the petitioner are established by production of undisputed documents on record and non-examination of the complainants is not at all fatal to such an enquiry. A reading of the judgment of the Magistrate's Court shows that the documents which are produced in the enquiry were not produced before the Magistrate. In that context the petitioner is acquitted by applying the principle of benefit of doubt and therefore, it is not a case where the criminal Court has completely exonerated the petitioner and has found the charges levelled against him are false. The forensic report was produced in the enquiry and the petitioner had access to the same but he did not choose to challenge the said report nor did he make any request to the Enquiry Officer to order the forensic expert who has given this report to be present for cross examination. In the absence of any challenge to the said report the said report becomes substantive evidence on which the authorities can act upon. There is no bias as alleged by the petitioner and having regard to the gravity of the charges proved and having regard to the fact that the very confidence of the public in the institution would be ruined by the act of the petitioner, the Labour Court was fully justified in not exercising its jurisdiction u/s 11-A of the Act and therefore he submits as the award passed by the Labour Court is based on legal evidence and in accordance with such legal principles, no case for interference is made out.

7. In the instant case the Disciplinary Authority himself has conducted the enquiry that has been found fault with by the petitioner. According to the petitioner the enquiry has to be conducted by an Officer other than the Disciplinary Authority so as to exclude any bias on the part of the Disciplinary Authority. I am unable to agree with this submission. It is because as the Disciplinary Authority would be too busy and the recording of evidence requires a long time, normally an Enquiry Officer is appointed who conducts the enquiry and submits report to the Disciplinary Authority. The best way to hold an enquiry is that the Disciplinary Authority himself should record the evidence of the witnesses so that he will have the advantage of observing the demeanour of the witnesses and on the basis of the material on record he can arrive at a definite conclusion not only regarding proof of misconduct but also regarding the punishment to be imposed for the proved misconduct. Merely because the Disciplinary Authority served a charge sheet on the petitioner, conducted the enquiry, prepared a report and then passed an order of dismissal that would in no way vitiate the enquiry conducted by him.

8. Insofar the contention, in the absence of a Presenting Officer the Disciplinary Authority has acted as a Prosecutor, conducted examination-in-chief of the management witnesses and marked documents on behalf of the management is concerned, it is settled law that there is no compulsion to have a Presenting Officer in a domestic enquiry. Merely because the Disciplinary Authority himself records the evidence of management witnesses in the form of examination-in-

chief and marks documents on behalf of the management, there is no presumption that he acted as a Prosecutor as well as a judge in the enquiry. There is no such abstract proposition. On the facts of the case if it is demonstrated that the Enquiry Officer had acted as a Prosecutor and conducted examination-in-chief by producing the documents on behalf of the management and marking the same, then it can be said that the enquiry is vitiated. For that one has to look into the answers which he has recorded in the examination-in-chief and the nature of the documents produced and the manner of marking those documents. The law on the point is well settled.

9. In the case of *B. Viswanatha Rao v. Management of Canara Bank and Anr.*, in W.P. 7744/1999 disposed off on October 12, 2004, this Court after reviewing the entire case law held as under:

"11. From the aforesaid judgments it follows that the law on the point is well settled. Domestic enquiry in Industrial Law has acquired great significance and industrial adjudication attached considerable importance to such enquiry. Enquiry is not an empty formality but it is essential condition to the legality of the disciplinary order. Holding of a fair and regular enquiry is sine quo non before an order of dismissal is passed on the ground of misconduct. The Disciplinary Enquiry is a quasi-judicial enquiry which is held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially because the charges of misconduct, if proved will result not only in deprivation of livelihood of the workman but will also attach stigma to his character. The basic postulate of a domestic enquiry is that it must be fair in all respects and should not be conducted with "an evil eye and uneven hand".

12. The traditional judicial approach on the representation of the parties before Domestic Tribunals is that a domestic enquiry is a managerial function and as such it is best left to the management without the intervention of outsiders and persons belonging to legal profession. This approach is based on the view that enquiry before Industrial Tribunals are of simple in nature where technical rules as to evidence and procedure do not prevail and persons appointed to hold such enquiry are generally not lawyers. In other words, Enquiry Officers holding enquiry without being unduly influenced by strict rules of evidence and procedural juggernaut and hear the delinquent employee in person and in such an informal enquiry the delinquent officer could at best be able to defend himself.

13. Normally much industrial establishments have highly trained officers who are engaged in representing the management in domestic enquiries. However, it is not incumbent on the management that it must appoint a presenting officer before domestic enquiry. It may leave it to the enquiry officer himself to elicit relevant information from the witnesses presented before him by the management and the workmen. Such procedure is permissible as long as the Enquiry Officer does not play the role of Presenting Officer. There is no legal compulsion that Presenting Officer should be appointed. The mere fact that the Presenting Officer was not appointed by the management is no ground to

invalidate the enquiry.

14. In a domestic enquiry an Enquiry Officer is appointed to enquire into the truth or otherwise of the charges levelled against the delinquent employee. The whole purpose and object of such domestic enquiry is to get at the truth of the matter. No doubt it is the management which has to establish the charges levelled against the delinquent employee by examining witnesses to substantiate the charges. Thereafter it is open to the delinquent employee to adduce evidence in support of his defence. They could examine the witnesses in support of the charges levelled against the delinquent employee: When a Presenting Officer is not appointed by the management merely because few questions are put by the enquiry officer to such witnesses of the management it does not amount to examination-in-chief by the Enquiry Officer. The Enquiry Officer can put questions to the witnesses who appeared before him for clarification, whenever necessary. If when such questions are put and the witnesses give answers which are against the interest of the opposite party then if the Enquiry Officer allows the witnesses to be cross-examined on those points the rules of fair play is observed. The right of an Enquiry Officer to put questions to witnesses by way of clarification is well recognised.

15. The purpose and object of permitting the Enquiry Officer to put such questions by way of clarification is to ascertain the real incident. Merely because such questions are put by the Enquiry Officer in a case where no Presenting Officer is appointed by the management it does not amount to examination in chief. However, under the guise of putting clarificatory questions if the Enquiry Officer puts leading questions to the witness of the management and records evidence when no Presenting Officer is appointed and after cross examination of those witnesses again puts questions by way of re-examination it cannot be said that those questions are put by way of clarification. Similarly, in the absence of a Presenting Officer when the defence witnesses are examined if the Enquiry Officer cross-examines the defence witnesses on all the evidence which they have stated and that too by putting leading questions it is a case of the Enquiry Officer acting as Prosecutor and under those circumstances the entire enquiry gets vitiated. However, it is not possible to lay down as a rule of law what questions the Enquiry Officer is permitted to put in a domestic enquiry or how many questions he can put. The question whether the Enquiry Officer, has put questions by way of clarifications or virtually he has done the examination-in-chief and cross examination of the defence witnesses is dependent on the facts and circumstances of each case. The same has to be gathered by looking into the evidence, the nature of questions put, number of questions put, and the answers obtained and how the said answers have been made use of in preparing the report. Therefore the material on record in any particular case demonstrates that the Enquiry Officer acted as a Prosecutor, that too, in the absence of a Presenting Officer such an enquiry gets vitiated. The real test is whether the departmental proceedings reflect bias on the part of the enquiry officer. If so the enquiry can be said to be vitiated."

10. In the background of this legal position we have to look into the facts of this case. Admittedly, there was no Presenting Officer. I have gone through the questions put by the Enquiry Officer to the management witnesses and the answers given by those witnesses and the documents which are marked in the course of the said evidence. From the material on record, I am satisfied that the questions which were put by the Enquiry Officer are not such as to get information with the intention of proving the guilt in the enquiry which he was conducting. In the absence of the Presenting Officer the witnesses were asked questions about their knowledge about the allegations made in the charge sheet, answers were recorded. The documents which are before Enquiry Officer were pointed out to them which they have recognised and they were marked and having regard to the nature of charges levelled against the petitioner any amount of oral evidence would be of very little assistance in proving such charges. Such charges are to be proved by documentary evidence. The documents produced in the enquiry are either in the handwriting of the petitioner or they bear his signature. The petitioner did not lead any evidence in support of his defence to point out that those documents did not bear his signature or are they in his hand writing. Even on account of the blanket denial, the disputed signatures and the handwriting were referred to the forensic expert and his report was obtained. The report was very much available at the time of enquiry. The petitioner did not file any objections to the said report nor did he make a request to call upon the forensic he was conducting. In the absence of the Presenting Officer the witnesses were asked questions about their knowledge about the allegations made in the charge sheet, answers were recorded. The documents which are before Enquiry Officer were pointed out to them which they have recognised and they were marked and having regard to the nature of charges levelled against the petitioner any amount of oral evidence would be of very little assistance in proving such charges. Such charges are to be proved by documentary evidence. The documents produced in the enquiry are either in the handwriting of the petitioner or they bear his signature. The petitioner did not lead any evidence in support of his defence to point out that those documents did not bear his signature or are they in his hand writing. Even on account of the blanket denial, the disputed signatures and the handwriting were referred to the forensic expert and his report was obtained. The report was very much available at the time of enquiry. The petitioner did not file any objections to the said report nor did he make a request to call upon the forensic expert who gave the report to be made available for cross-examination. In the absence of any attempt on the part of the petitioner to challenge the said report, the said report which is in the nature of expert evidence is a substantive piece of evidence in the enquiry which the Enquiry Officer has taken note of. It is on the basis of this material the Enquiry Officer has come to the conclusion that the charges levelled against the petitioner are proved. As the said findings recorded by the Enquiry Officer is mostly on the basis of the documentary evidence, the contention of the petitioner that the Enquiry Officer also played the role of Prosecutor in examining the management witnesses and marking the documents, is without any

substance. Therefore, I do not find any substance in the said contention.

11. The second contention was, both the complainants were not examined and therefore in the absence of examination of complainants it cannot be said that the charges are proved and at the same time an opportunity was denied to the petitioner to cross examine those persons to get at the truth. In support of his contention the learned Counsel for the petitioner relied on the judgment of the Supreme Court in the case of *Hardwari Lal Vs. State of U.P. and Others*, . That was a case of non-examination of Police Inspector who recorded the statement of a police constable who is stated to have abused and witness who is said to have accompanied the charge-sheeted police constable to hospital for medical examination. As the fact to be proved in that case was, the persons in whose presence he was abused and the persons who witnessed the abuse. It is in that context the Supreme Court held that the non-examination of those witnesses has vitiated the proceedings. But in the instant case, the charges are to be proved in the light of documentary evidence. In such circumstances, and in particular in departmental proceedings against the bank employee the Supreme Court in the case of *State Bank of India Vs. Tarun Kumar Banerjee and Others*, , dealing with such a contention held at pp. 1376 & 1377 of LLJ:

"6. A customer of the Bank need not be involved in a domestic enquiry conducted as such a course would not be conducive to proper banker-customer relationship and, therefore, would not be in the interest of the Bank. Further when money was secured a prudent banker would deposit the same in the account of the customer complaining of loss of money and, therefore, non-production of money also would not be of much materiality. When in the course of domestic enquiry no reliance was placed on the so-called confessional statement made by the first respondent, then non-production of the same is also of no significance. Thus, in our opinion, these circumstances are irrelevant and the Tribunal could not have placed reliance on the same to reach the conclusion it did and, therefore the learned single Judge was justified in interfering with the same...."

Further it held at p. 1377:

"8...When sufficient evidence was produced to conclude one way or the other, the evidence not produced do not have any significance until the same was such as could have been tilted the evidence adduced in the course of domestic enquiry. No such evidence has been produced in the present case...."

Therefore, in the instant case the charge against the petitioner was, after collecting money from the customer he did not credit the same into his account and he did not make the necessary entries in the books of the bank. The other charge is that he has withdrawn the money from the account of the customer by forgery. To prove these two charges, the evidence of the customer is of no relevance. These charges have to be proved by producing the documents which are in the custody of the bank showing the receipt of money, not making relevant

entry in the books of the bank when he has made entries in the pass book of the said customer and the document through which he has withdrawn the money from the customer. In that view of the matter, I do not find any infirmity in the enquiry conducted and the enquiry is not vitiated due to non-examination of the customers who are the complainants on whose complaint these charges were framed against the petitioner.

12. Insofar as the contention that the petitioner has been honourably acquitted by the criminal Court when he was sought to be prosecuted on the similar charges has been ignored by the Labour Court is concerned, the law on the point is well settled. In fact the judgment relied on by the petitioner has no application to the facts of this case, because the charges before the Criminal Court and the charges before the departmental enquiry were not identical as in the case of *Sahakari Ganna Vikas Samiti Ltd. v. State of U.P. and Ors.* reported in 1999 III LLJ 1296 on which reliance was placed by the petitioner. In the case of *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, , the three judges Bench of the Supreme Court relying on the decision of *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another*, , wherein it was held, that the acquittal by the Criminal Court was based on the fact that the prosecution did not produce sufficient material to establish its charge. Further it was observed that the evidence led by the management before the Labour Court was different from that led by the prosecution in a criminal case and the materials before the criminal Court and the Labour Court were entirely different and therefore it was open to the Labour Court to have come to the independent conclusion de hors the finding of the criminal Court. Further they went on to hold as follows *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another*, at p. 779:

"27... From the above, it is seen that the approach and objective of the criminal proceedings and the disciplinary proceedings are altogether distinct and different...."

Then after relying on another judgment of the Supreme Court in *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, where it was observed that at p. 574:

"18. It is further trite that the standard of proof required in domestic enquiry vis-a-vis a criminal trial, is absolutely different. Whereas in the former "preponderance of probability" would suffice, in the latter, "proof beyond all reasonable doubt" is imperative."

13. Therefore, in the first place, the documentary evidence which the management relied in the Disciplinary Enquiry was not produced before Magistrate's Court as is clear from the observations made in the order. It is in that context the Criminal Court was not able to come to a definite conclusion and therefore, it acquitted the petitioner on the ground that the prosecution has failed to prove beyond reasonable doubt the guilt of the petitioner. That is not

the standard of proof, which is required in the Disciplinary Enquiry. In the Disciplinary Enquiry, in the instant case, the bank has relied on the documentary evidence which was not produced before the Magistrate's Court. Secondly, on the conduct of the petitioner in not setting out the grounds of his defence and not giving any evidence in the enquiry which resulted in the Enquiry Officer considering the material before him on the principle of probabilities of the case, which was sufficient to hold that the misconduct alleged against the petitioner was proved. In that view of the matter, I do not find any substance in the said submission.

14. The learned Counsel for the petitioner contended that even if it is held that the Disciplinary Enquiry is valid and proper, an obligation was cast upon the Labour Court to re-appreciate the entire material on record and come to the conclusion whether the finding recorded by the Enquiry Officer is perverse or not and whether the material on record establishes the misconduct and such an exercise has not been done by the Labour Court.

15. I have gone through the award of the Labour Court. Before the Labour Court, the only point that was urged was that the finding on merits is vitiated on account of the acquittal order by the Criminal Court. The Labour Court has taken pains to go through the entire judgment of the criminal Court and then it has pointed on the infirmities in the said order and it has thereafter come to the conclusion that the order of acquittal in no way comes in the way of the Enquiry Officer or the Labour Court in holding that the misconduct is proved. Thus, when the Labour Court is agreeing with the finding of the Enquiry Officer without recording elaborate reasons and in the absence of any perversity is pointed out, but after appreciating the entire evidence, the Labour Court has held that the misconduct is proved. The said finding cannot be found fault with.

16. Lastly it was contended, even though the finding recorded by the Criminal Court would not be binding in a domestic enquiry or before the Labour Court, certainly that factor ought to have been taken note of by the Labour Court while exercising its discretion u/s 11-A of the Act. The Labour Court is under an obligation to consider after being satisfied that the misconduct is proved, whether the punishment imposed by the Disciplinary Authority is proportionate to the gravity of the charges levelled against the petitioner. There is no hard and fast rule by which in arriving at a conclusion what are the factors the Labour Court has to take note of. But if the Labour Court takes into account all the factors which are placed before it and takes note of the law on the point then the approach of the Labour Court cannot be found fault with. The Labour Court has taken note of the order of acquittal by the criminal Court. It has also taken note of the law laid down by the Supreme Court regarding the exercise of discretion in matters of breach of trust, pilferage, misappropriation, fraud and then having regard to the charges which are proved against the petitioner, which is nothing but a case of breach of trust, fraud and pilferage it has held that, no case for interference with the punishment is made out. Therefore, I do not find any

infirmity in the said finding.

17. The Supreme Court in the case of Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, has held as under at p. 726 of LLJ:

"6. It is misplaced sympathy by the Labour Court in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

7. In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated"

18. The Supreme Court in the case of Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC affirming the law laid down in the aforesaid case of B.S. Hulikatti (supra) has held as under at p. 235 of LLJ:

"4. This Court in Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, , has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court was firmly of the opinion that in cases of the present, orders of dismissal should not be set aside.

5. Furthermore, we agree with the observations of the single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though u/s 11-A, the Labour Court has jurisdiction and powers to interference with the quantum of punishment, however, the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal."

19. In the case of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourara Sangha Etc., it is held as under at pp. 1396 & 1397:

"3. The question involved in these appeals is - whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondent workmen with 25% back wages in spite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an

unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages.

6... Once an 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. *Municipal Committee, Bahadurgarh Vs. Krishan Behari and others*, In *U.P. SRTC v. Basudeo Chaudhary*, (1997) 11 SCC 370 this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ 5.35 per head and also by making entry in the way bill as having received the amount of Rs. 2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in *Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc.*, this Court considered the case of a workman who was working as a Dairy Helper-cum-cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. This Court held that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power u/s 11-A of the ID Act to grant relief with minor penalty."

20. In the aforesaid judgments the Supreme Court has categorically held that no sympathy be shown when fraud, pilferage, breach of trust is established and if any sympathy is shown it would be a misplaced sympathy.

21. In that view of the matter the Labour Court has exercised its jurisdiction properly. Therefore, I do not find any merit in this writ petition. Hence, I pass the following order:

The writ petition is dismissed. No costs.