

(2016) 12 MAD CK 0068
In the Madras High Court
Case No : Writ Appeal No. 1196 of 2014

P. Sudalaimuthu

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Citation : (2017) 1 LLJ 387

Hon'ble Judges : Mr. Huluvadi G. Ramesh and Mr. S. Vaidyanathan, JJ.

Bench : Division Bench

Advocate : Mr. Anand Gopalan for M/s. T.S. Gopalan, Advocates, for the Respondent; Mr. V.B.R. Menon for Mrs. T. Kokilavane, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. S. Vaidyanathan, J. - Aggrieved by the dismissal order dated 04.06.2014 passed by the learned Single Judge in W.P. No. 10097 of 2011, the writ petitioner has come up with this Appeal seeking to set aside the said order passed against him and to secure employment in the 1st respondent/Bank.

2. According to the appellant/writ petitioner, the 1st respondent/Bank invited applications for the post of part-time House Keeper, by an advertisement dated 11.06.2008 and the appellant, in response to the same, applied on 23.06.2008 along with requisite particulars. The minimum educational qualification for the post of a House Keeper was a Second standard pass or Eighth standard fail. The petitioner, belonging to Hindu Kuravan community, a Scheduled v. Caste, who has passed Eighth standard, enclosing copies of his Community Certificate and School Certificate along with his application, applied for the said post mentioning that he had passed only Fifth standard.

3. After the selection process was over, the appellant/writ petitioner was provisionally short-listed for appointment to the post of part time House Keeper in the 1st respondent/Bank and thereafter, he was issued with the letter of appointment on 20.08.2008 appointing him as Part-time House Keeper in one-

third scale wages with a basic pay of Rs.1,353.33 at Melapalayam Branch. After joining duty, he was kept on probation for a period of six months and thereafter, his services were confirmed.

4. In the meanwhile, the 1st respondent/Bank called for applications from prospective candidates by another advertisement dated 26.09.2008 for the post of Peon/Hamal. The appellant/writ petitioner was also one among the candidates, who applied for the said post of Peon/Hamal by declaring that he had passed Eighth standard. The 1st respondent/Bank found the discrepancy that the appellant/writ petitioner, while applying for the post of part-time House Keeper had already declared to have passed only Fifth standard and issued a charge memo, dated 26.08.2010 calling upon the appellant to submit his explanation for concealment of material information.

5. The appellant/writ petitioner submitted his detailed explanation to the 1st respondent Bank stating that although he had passed Eighth standard, since a pass in Second standard was the basic educational qualification, out of sheer innocence, he had thought that a declaration of pass in Fifth standard would get him employment and that he had no wilful intention to suppress or conceal the factum of his pass in Eighth standard and prayed for dropping of the charge. Unable to accept the explanation offered by the appellant, the Disciplinary authority ordered for an enquiry by appointing an Enquiry Officer, who after enquiry, finding that the appellant had knowingly concealed the material information about his educational qualification, concluded that the charges were proved beyond doubt. Finally, the Disciplinary Authority imposed the punishment of dismissal of the appellant from service.

6. After hearing the learned counsel on either side and on consideration of the material documents available on record, this Court, by an order dated 04.06.2014, dismissed the Writ Petition in W.P. No.10097 of 2011, holding as under:

"10. This Court, again finding force in the submissions made by the learned counsel for the respondents, is unable to agree with the prayer made by the petitioner. As fairly admitted by the learned counsel for the petitioner, it is not in dispute that the petitioner has misrepresented his educational qualification at the time of securing employment for the post of part time House Keeper by withholding the full information as to his educational qualification. When the educational qualification contemplated for the post of part time House Keeper is only second standard pass or eighth standard fail, the petitioner applied on 23.06.2008 with lesser qualification. Therefore, the petitioner, having concealed his educational qualification, suffered a departmental proceeding at the hands of the second respondent. After issuance of charge memo dated 26.08.2010, he was called upon to submit his explanation. The petitioner also, in his written representation dated 30.08.2010, has stated that although he passed eighth standard, a pass in fifth standard was sufficient for the post, but, however, considering his socio-economic status, he has requested the respondent Bank to

drop the charges, as there was no wilful or dishonest intention to cause any loss to the Bank. Moreover, when his appointment to the post of part time House Keeper is not going to come in the way of any financial aspect, he requested in his detailed representation dated 30.08.2010 not to proceed with the departmental proceedings. But the disciplinary authority, finding no merits in the explanation, finally appointed an enquiry officer, who also, after completion of the enquiry, submitted a report holding him guilty of the charges. On the basis of the report of the enquiry officer, the disciplinary authority thought it fit to impose the present punishment of dismissal from service. No doubt, the learned counsel for the petitioner has placed on record the judgment of the Andhra Pradesh High Court in the case of Mary Saikumari v. State Bank of India, Vijayawada and another, 1994 (3) ALT 350 seeking interference in the impugned punishment of dismissal, on the ground that possessing better qualification by a candidate cannot be a disqualification. But it has been the repeated dictum and ruling of both the Apex Court and this Court that it is the prerogative and privilege of the disciplinary authority to impose suitable punishment on the delinquent depending upon the facts and circumstances of each case. Hence, in the present case, the second respondent/disciplinary authority has come to the conclusion that the petitioner is no longer required to serve in the Bank, for the reason that he got entry by deliberately concealing his educational qualification, this Court is unable to agree with the prayer made by the petitioner."

7. According to the learned counsel for the appellant/writ petitioner, though there are several punishments contemplated in the Bipartite settlement, the 1st respondent/Bank, without appreciating the facts, imposed a capital punishment taking away the livelihood of the appellant. It is his contention that the punishment awarded by the disciplinary authority fails the test of reasonableness on the ground that the rules of Disciplinary proceedings of the 1st respondent/Bank have categorized the various acts of misconducts by its employees into two groups viz. (i) Gross misconducts and (ii) Minor misconducts. There are 21 types of misconducts, which are grouped into the category of Gross misconducts against which 9 types of punishments, ranging from "condonation to removal from service" has been prescribed. According to him, as there is no one-to-one co-relation between the various types of misconducts and the punishments prescribed therein, the Disciplinary authority is duty bound to apply his mind to the nature and gravity of the offence and thereafter suit the offence and the offender with the quantum of punishment.

8. Learned counsel for the appellant further submitted that it is settled law that the nature of employment, gravity of offence and the background of the employee shall be taken into account while suiting the appropriate punishment with the offender for any particular offence and that the Disciplinary Authority had shown bias and discrimination against the appellant by awarding the maximum punishment. While another part-time sweeper one Poojari, serving the 1st respondent/Bank in Bangalore region was charged with the same misconduct and awarded the punishment of stoppage of increment without cumulative effect,

awarding the punishment of removal from service on the appellant for the same offence shows that there is clear bias by the Disciplinary Authority. Hence, according to the learned counsel, the learned Single Judge ought to have appreciated that prescribing maximum qualification of Eighth standard fail as the upper limit for the post of part-time Sweeper and minimum qualification of Tenth standard pass for the next post of Full-time Sweeper is in violation of Article 16 of the Constitution of India.

9. In support of his contentions, learned counsel for the appellant has relied on the following decisions: Alternate Remedy:

(i) State of U.P. v. Mohammad Nooh, AIR 1958 SCC 86 (1)

"9. In the first place it must be noted that the two observations quoted from the decision of this Court on which reliance is placed on behalf of the appellant State were made in a case where the alleged error, irregularity or illegality was committed by a special tribunal which had not merely the trappings of a court but was a court of law presided over by a judge with legal training and background and bound by rules of evidence and procedure laid down for it and the appeal from its decision lay before the highest and final court of the State-a superior court of record. But orders made on departmental "trial" held by an officer in the department without any legal training and orders passed by his superior officers in the same department on appeal or in revision which, in the words of Harries C.J. in Assistant Collector of Customs v. Soorajmull Nagarmull were only in the nature of an appeal from Caesar to Caesar and which might not be regarded with any great confidence by persons brought before them can hardly be equated with reasonable propriety with the orders passed by the Special Tribunal and an appeal therefrom by the Hyderabad High Court with reference to which bodies alone the said observations had been made.

10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. (Halsbury's Laws of England, 3rd Ed., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

(ii) Union of India and others v. Tania Constructions Pvt. Ltd. (2011) 5 SCC 697

"33. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.

34. We endorse the view of the High Court that notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company."

(iii) M/s. Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SCC 556

"3. It is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by this Court in *Rashid Ahmed v. The Municipal Board, Kairana*(1), "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs" and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere. in a writ petition unless there are good grounds therefore. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted. In *The State of Uttar Pradesh v. Mohammad Nooh* (2), S.R. Das, C.J., speaking for the Court, observed:

"In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. (Halsbury's Laws of England, 3rd Ed., Vol. II, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in " arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has

exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. In the King v. Postmaster General Ex parte Carmichael [1928 (1) K.B. 291] a certiorari was issued although the aggrieved party had an alternative remedy by way of appeal. It has been held that the superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction. The case of Rex v. Wandsworth Justices Ex parte Read [1942 (1) K.B. 281] is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction."

Proportionality of Punishments:

(i) Ex.Naik Sardar Singh v. Union of India and others, AIR 1992 SCC 417

"4. It can be seen that Sections 71(a) to 71(e) and Section 71(k) provide for extreme punishments and are severe in nature. Sections 71(f) to 71(j) and Section 71(l) provide for comparatively lesser punishments. Section 72 of the Act is the next relevant Section which reads as under:

"72. Alternative punishments awardable by court - martial-Subject to the provisions of this Act, a Court-Martial may, on convicting a person subject to this Act to any of the offences specified in Sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in Section 71, regard being had to the nature and degree of the Offence."

It can be seen that under Section 73 of the Act, the court - martial may award more than one punishment as mentioned therein. In the instant case Section 63 also is not mentioned in the charge sheet. Assuming that the offence committed by the appellant is covered by the residuary Section 63 but in awarding the punishment the court-martial has to keep in view the spirit behind Section 72 of the Act and it has to give due regard to the nature and degree of the offence. It can be seen that Section 63 provides for awarding any of the lesser punishments enumerated in Section 71 of the Act. In view of these provisions of law and having regard to the nature and degree of the offence, we are firmly of the view that the punishments awarded to the appellant namely, three months' R.I. and dismissal from service are severe and are also violative of Section 72.

(ii) Mohd. Riazul Usman Gani and others v. District & Sessions Judge, Nagpur and others, (2000) 2 SCC 606

"19. We do not know what are the duties attached to the post of a peon. But

perhaps one thing peons are not required to do the work of sweepers or gardeners. Qualifications for gardeners and sweepers have been separately provided in the Recruitment Rules and the only qualification for both the categories of these posts is "good physique and also to carry out the duties attached to the post.""

20. If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointment to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties. Qualification prescribed is minimum. Higher qualification cannot become a disadvantage to the candidate.

21. A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification, than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application."

(iii) *Bhagat Ram v. State of Himachal Pradesh and others*, AIR 1983 SCC 454 (1)

"15. The question is once we quash the order, is it open to us to give any direction which would not permit a fresh inquiry to be held ? After all what is the purpose of holding a fresh inquiry. Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh inquiry. What option is open to us in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fair play demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in *Hindustan Steels Ltd., Rourkela v. A. K. Roy & Ors.* where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view, the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50% of the arrears from the date of termination till

the date of reinstatement."

(iv) *Raghubir Singh v. General Manager, Haryana Roadways*, (2014) 10 SCC 301

"The above said "Doctrine of Proportionality" should be applied to the fact situation as we are of the firm view that the order of termination, even if we accept the same is justified, it is disproportionate to the gravity of misconduct. In this regard, it would be appropriate for us to refer to certain paragraphs from the decision of this Court in the case of *Om Kumar and Ors. v. Union of India*, wherein it was held as under:

"66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Hence the Court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority."

(v) *Mary Saikumari v. State Bank of India, Vijayawada and another*, 1994 (3) ALT 350

"Can a better qualification be a disqualification? It should not be and that is the universal approach. But, in our country, in some cases better qualification is a handicap and the instant case is a glaring example of the same.

2. The petitioner is a scheduled caste woman whose economical condition was very poor and whose parents could not afford to educate her any further beyond 10th Class (SSC). She had failed in 10th Class (SSC) examination held in the year 1975. Poor economic condition forced her to remain in that stage and obviously, she could not seek employment at that age and that too with that qualification of SSC fail. Hoping to get at-least a Sweeper or an Attender's post, she registered her name with employment exchange during the year 1978 bearing Registration No. 928/78. But, even after waiting for four years, she did not get a call. During October 1982, she again appeared SSC examination with a fond hope of getting some employment, if she passes SSC examination. She did pass SSC examination, but only in 3rd class. But, poor girl did not know that she has incurring disqualification to hold the post of an Attender or Sweeper in the establishment of the respondents by passing SSC examination. During the end of 1983, she got a call for appointment to a post of Sweeper-cum-Water-woman in the Office of the respondents. She was appointed initially in February, 1984 on temporary basis and was made permanent in that post with effect from 1-9-1984. But, that lasted only just over an year, as on 16-11-1985, she was visited with show cause notice calling her to explain as to why she should not be discharged from service on the ground that she suppressed of having passed the SSC examination. While SSC fail is a qualification for appointment, a pass in SSC is a disqualification for that post. In the said disciplinary action, the enquiry

officer submitted adverse reports stating that even though the petitioner had passed SSC as on the date of her interview, she has suppressed that fact and in the form filled up for appointment, she had declared to have failed in SSC, but by that time, she had already passed SSC and as such, this wilful suppression to get employment amounts to misconduct and basing on the said report, the disciplinary authority has held her of having committed misconduct mentioned above and inflicted the punishment of discharge from service and the result is this writ petition and the writ petition having been admitted, stay of operation of the impugned order of discharge was granted by this Court and the same is holding the field even on this day. Mr. C. v. Mohan Reddy, the learned Counsel for the petitioner submits that there was no wilful suppression of any fact so as to warrant the inflictment of the harshest punishment of discharge from the post which results in deprivation of livelihood of herself and family members. He further submits that not only the fundamental right under Article 21 is violated, but also the equality clause enshrined under Articles 14 and 16. He cited the judicial precedents rendered by the Supreme Court in H. D. Singh v. Reserve Bank of India, AIR 1986 SC 132, Y. Srinivasa Rao v. J. Veeraiah, AIR 1993 SC 929, and also on an unreported judgment of the Division Bench of Orissa High Court in OJC No. 1456/84 in support of his arguments."

(vi) Sengara Singh and others v. State of Punjab and others, (1983) 4 SCC 225

"7. There is not an iota of evidence which would distinguish the case of the present appellants from those who were beneficiaries of the indulgence of the Committee and the largesse of the State. The net result has been that the present appellants have been arbitrarily weeded out for discriminatory and more severe treatment than those who were similarly situated. This discrimination is writ large on the record and the Court cannot overlook the same.

11. Is there any doubt about the relief sought by the appellants? They sought reinstatement on the ground of equality of treatment with persons similarly situated. The prayer for reconsideration of the case was a step to be taken for reinstatement. We, therefore, reject the contention of Mr. Sharma, learned Counsel that we should remit the case to the High Court.

12. Logically the appellants must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. Accordingly, the appellants would be entitled to reinstatement in service. Therefore, both the appeals succeed and are allowed and the order of the High Court dismissing the writ petitions is quashed and set aside. The State of the Punjab is directed to reinstate the appellants subject to the same conditions set out at annexure P-II subject to which the other dismissed personnel of the Police Force were reinstated. They should be reinstated as directed herein forthwith from today. Their services should be treated as continuous and the period between the date of the dismissal and the reinstatement shall be treated as leave if available and admissible or leave without pay in leave of any kind is not available. To the extent they are treated as on leave they should be paid leave salary.

Respondents shall pay cost of the appeals in both appeals quantified at Rs. 2500/- in each case."

(vii) *Man Singh v. State of Haryana and others*, (2008) 12 SCC 331

"20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness.

22. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle.

23. However, in normal course we could have remitted the case to the High Court for taking fresh decision, but we are of the opinion that in a case of this nature, we should in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India decide the case on merits to avoid further delay in deciding the Regular Second Appeal by the High Court.

24. In the result, for the above-said reasons and discussions, the appeal is, accordingly, allowed. The judgment dated 20.03.2006 of the High Court in RSA No. 4272 of 2005 confirming the judgments and decrees of the courts below shall stand set aside. Consequently, Civil Suit No. 571/1 of 2002 on the file of the Additional Civil Judge (Senior Division), Sonapat, is decreed in terms of the relief sought for."

(viii) *Rajendrayadav v. State of Madhya Pradesh and others*, (2013) 3 SCC 73

"9. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly.

(ix) Om Kumar and others v. Union of India, (2001) 2 SCC 386

"71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is

questioned as "arbitrary" under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment."

10. On the other hand, learned counsel appearing for the 1st respondent/Bank raised a preliminary objection as to the maintainability of the Writ Petition, contending that when the appellant/writ petitioner has got an alternative remedy by preferring an appeal before the Appellate Authority, without availing the same, he ought not have approached this Court challenging the order of dismissal. It is his further contention that since the appellant is a workman under Section 2(s) of the Industrial Disputes Act, 1947, his remedy is to raise an industrial dispute and it is for the Industrial Adjudicator to reappraise the evidence and impose the punishment, however the appellant makes out his case. According to him, in case of any defective enquiry, the appellant would be having an opportunity to let in evidence to establish the charges and a Writ Petition will lie if the facts are in dispute.

11. In support of his contentions, learned counsel appearing for the 1st respondent/Bank has relied on the following:

(i) a Three-Judge Bench decision of the Supreme Court in the case of Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and another, (2006) 13 SCC 619

"5. In the appellant's writ petition preferred against the award, the learned Single Judge of the High Court rightly disapproved the above view of the Labour Court and said:

" Workers were expected to give correct information as to their qualification. They failed to do so. They were in fact overqualified and therefore ineligible to apply for the job. It has been stated that applications received from some overqualified candidates were rejected. The petitioner as also the workers are bound by the terms of Ext. P-1 which had to be given effect to. Over qualification is certainly, in the circumstances, a disqualification, which aspect the first respondent failed to grasp. Ex.P-10 in these cases is unsustainable and is accordingly set aside."

10. We are inclined to agree with these submissions. 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, generosity and private 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 judicial process of its dignity, authority, predictability and respectability.

11. In this case, we have no hesitation to hold that both the Labour Court and the High Court have erred. We allow the appeal, set aside the orders of the Labour Court and of the High Court in the writ petition, and dismiss the dispute raised by the respondent before the Labour Court." (ii) yet another Supreme Court decision in the case of Santosh Kumar Meena and others v. Government of NCT of Delhi & others, decided on 29.07.2013 in Civil Appeal No.6116 of 2013.

"16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.02.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

17. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/ advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

18. There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

19. The appeal is devoid of any merit and does not present special features warranting any interference by this Court. The appeal is accordingly dismissed."

(iii) a judgment of the Andhra Pradesh High Court in the case of Ch. Papanna v. The Personnel Manager, State Bank of India, Hyderabad and others, (1996) 5 SLR 772 (DB)

"17. Thus, it is manifest from the above decisions that where over qualification is not prescribed as a bar for consideration of appointment and if the candidature is rejected on the ground of possessing over-qualification, the same amounts to arbitrariness and therefore, illegal discrimination and violative of Articles 14 and 16. Where the Management or the employer prescribes minimum qualification as a requirement and in addition to that it prescribes that over-qualification is a bar, in such a case, the rejection of the candidature on the ground of over-qualification cannot be said to be arbitrary or violative of Articles 14 and 16 of the Constitution because the Management or the employer has got every right to prescribe qualifications keeping its peculiar needs in view.

19. In the present case, the petitioner was possessing S.S.C. qualification on the date when he was originally appointed as a temporary Messenger. Thereafter, the Bank absorbed the services of temporary Class IV employees, who worked for more than 270 days within a span of three years. The petitioner was not absorbed on the ground that he was over-qualified to hold the post of Messenger. In view of our finding that over-qualification is certainly a disqualification, we see no ground to issue a writ of mandamus as prayed for."

12. Heard the learned counsel on either side, perused the material documents available on record and gave careful consideration to the judgments relied on by them.

13. After detailed arguments, before we could reserve this case for judgment, a suggestion was posed by the Bench as to whether the appellant is willing to be considered as a fresh entrant to the post of Peon/Hamal, as it has been pointed out that the qualification for the said post is a pass in Eighth standard, learned counsel for the appellant sought time to get instructions, as he could not answer in the affirmative without taking proper instructions.

14. Though the allegation against the appellant/writ petitioner is that he concealed the fact that he had passed Eighth standard while applying for the post of part time House-Keeper, which actually requires a Eighth standard fail, his main grievance is that the punishment of dismissal from service is highly disproportionate to the charges levelled against him.

15. To substantiate his case, learned counsel for the appellant/writ petitioner has relied on many judgments. However, he heavily relied on a judgment of the Andhra Pradesh High Court in the case of Saikumari v. State Bank of India, Vijayawada and another, wherein, in similar circumstances, the High Court set aside the order of discharge, making it clear that throwing out a person who is

economically poor would surely deprive herself and members of their family of their livelihood.

16. Learned counsel for the appellant also heavily relied upon an Apex Court judgment in the case of *Y. Srinivasa Rao v. J. Veeraiah and others*, AIR 1993 SC 929, wherein, a Two-Judge Bench has held as under:

"6. The decision to prefer an uneducated person over an educated persons amounts to allowing premium on ignorance, incompetence and consequently inefficiency. The only fault of the appellant is to have pursued his studies beyond 10th class. If he had discontinued his career as a student even earlier, say after passing 7th or 8th class, he would have been running the shop today. This clearly amounts to gross arbitrariness, and, therefore, illegal discrimination. Pursuing this line the State will have to be going in search of a more inefficient person and we do not know where this process would end. If we assume that since a better qualified person has got a better chance to succeed in life, an intelligent applicant who can run the shop efficiently should be rejected and a dim witted fellow should be selected. This is an absurd situation."

17. While so, in the judgment relied on by the learned counsel appearing for the 1st respondent/Bank in the case of *Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and another* (supra), a Three-Judge Bench of the Apex Court, dismissed the dispute raised by the respondent before the Labour Court and categorically held that 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, generosity and private benevolence.

18. Be it a Bank or an Industry or Company, each Firm has got its own Rules and Regulations on appointment of candidates. When the Company prescribes a specific qualification for appointment to a specific post, the candidate who applies for the called-for post must strictly adhere to the conditions. There are cases, where under-qualified candidates use fake Certificates to show that they are qualified for the called-for post and seek appointment, which is certainly violative of the law laid down. Only if the candidate falls within the prescribed qualification, he is eligible for the post called-for. The appellant herein, knowing very well that the post of part-time House Keeper, at the most requires an Eighth Standard fail, concealed his Eighth Standard Pass and applied for the said post that he had passed only Fifth Standard and also produced his Transfer Certificate to that effect.

19. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/ advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have

applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

20. Suppression of fact is a gross misconduct more particularly in service matters. Admittedly, the appellant has not availed the appellate remedy. Appellate remedy is not a bar even for raising an industrial dispute, as the Appellate Authority in these type of cases, will not differ from the finding of the Disciplinary Authority.

21. Hence, in view of the above, we have no other option except to follow the decision of the Larger Bench of the Apex Court in the case of Kerala Solvent Extractions Limited (supra). Accordingly, we confirm the order of the learned Single Judge, holding that the act of the 1st respondent/Bank is perfectly justified.

22. Resultantly, the Writ Appeal fails and stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.