
(1997) 07 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 2437 of 1994

USV Limited

APPELLANT

Vs

Maharashtra General Kamgar Union and another

RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Constitution of India, 1950 — Article 41, 43
Industrial Disputes Act, 1947 — Section 2, 6(2A)

Citation : (1998) 1 BomCR 604 : (1997) 3 MhLj 743

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : P.K. Rele and S.S. Pakale, for the Appellant; N.M. Ganguli, for the Respondent

Judgement

R.M. Lodha, J.—The petitioner, USV Limited, seeks to challenge the award passed by the 9th Labour Court, Bombay on 6-8-1994 in Reference (IDA) No. 661 of 1985 whereby the said Labour Court answered the reference partly in the affirmative and ordered quashing of dismissal orders dated 30-9-1984 as being unjustified and directed reinstatement of the four employees with continuity of service with effect from 1-10-1984.

2. The petitioner, USV Limited., (for short "employer") is a public limited company incorporated under the Companies Act. It carries on business of manufacturing pharmaceutical products and bulk drugs. For the said purposes the employer engages about 116 workmen in its factory situated at Govandi, Bombay. The 1st respondent, Maharashtra General Kamgar Union is a trade union registered under the Trade Unions Act, 1926. The said union in the present matter espoused the cause of four employees, namely, Shri M.N. Raut, Shri T.V. Baria, Shri R.P. Shinde and Miss Pratibha R. Gujar (for short "the workmen concerned"). The allegation of the employer is that on 5-2-1984 at about 1.00 p.m. the workmen concerned went to each department and instructed those workmen who were members of the 1st respondent to leave their respective

places of work. The employer thus alleges that the workmen concerned instigated the other workmen to stop work and thereby resorted to illegal strike. The workmen concerned and the other workmen thereafter entered the cabin of Shri S.L. Rajkondawar, Deputy Plant Manager where Mr. R.K. Sarma, plant Manager and Mr. K.P Bhalerao, Personnel Manager were present and gheraoed them in the cabin of Mr. S.L. Rajkondawar for more than four hours from 1.00 p.m. to 5.15 p.m. During the period of gherao, all the workmen concerned kept on shouting inside the cabin abusing in filthy language, threatening the officers with dire consequences and throwing wet duster, coins, rubber band, cigarettes and bangles on the aforesaid personnel of the employer. A threat was also given to Mr. R.K. Sarma that they would murder him. The workmen concerned, it is alleged by the employer, also prevented the other Managers from going to toilet or drinking water or taking lunch and participated and instigated the workmen to continue the gherao for over four hours. The employer, therefore, charge-sheeted the workmen concerned for the acts of misconduct, namely, going on an illegal" strike or abetting, inciting, instigating or acting in furtherance thereof; holding meeting inside the premises of the establishment without previous permission of the Manager; commission of an act subversive of discipline or good behaviour on the premises of the establishment, and gheraoing the Plant Manager and other two officers. Since the charges levelled against the workmen concerned were grave and serious, they were suspended during the enquiry and an Enquiry Officer was appointed to conduct a joint enquiry. The workmen concerned participated in the said enquiry and they were defended by the office bearer of the 1st respondent union. The Enquiry Officer concluded the enquiry and by his report and findings dated 17-9-1984 held the workmen concerned guilty of all the charges levelled against them. The employer concurred with the findings of the Enquiry Officer and since according to it, the misconduct proved during the enquiry was grave and serious, by an order dated 30-9-1984 the Concerned workmen were dismissed from service with effect from 30-9-1984. The petitioner union thereafter raised an Industrial dispute upon which a reference was made to the 9th Labour Court, for answering the industrial dispute, namely, whether Shri M.N. Raut, Shri T.V. Baria, Shri R.P. Shinde and Miss Pratibha R. Gujar should be reinstated with full back wages and continuity of service with effect from 1-10-1984. The union filed the statement of claim before the 9th Labour Court after the reference was made and documents were also produced by it. The employer submitted written statement and the documents were also produced by the employer. A preliminary issue was framed about the validity and propriety of the enquiry and by the Part I Award dated 26-9-1989, the 9th Labour Court held that the enquiry held against the workmen concerned was fair and proper. Thereafter the Labour Court proceeded to adjudicate the dispute on merits. The employer examined Mr. R.K. Sarma as its witness. The Labour Court heard the parties and after consideration of the available material held that the charges proved against the workmen concerned were serious misconduct. However, while awarding punishment the Labour Court held that since the incident took place on 5-2-1984 i.e. about 10 years before the decision

by the Labour Court, denial of back wages to the workmen concerned would be proper punishment and consequently as observed above set aside the dismissal orders of the workmen concerned and ordered their reinstatement with continuity of service with effect from 1-10-1984.

3. The only question which requires consideration in this writ petition and is sought to be canvassed by Mr. Rele, the learned Counsel for the petitioner is that once the 9th Labour Court found that the misconduct proved was grave and serious since the workmen concerned abused and gheraoed their officers and they were prevented from going to the toilet or from drinking water or from taking lunch and thus the said officers were tortured and humiliated by the workmen concerned, the punishment of dismissal inflicted upon the workmen concerned was just and proper and could not have been interfered with by the Labour Court in exercise of its powers u/s 11-A of the Industrial Disputes Act. In support of his submission, Mr. Rele relied upon, *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, , *The Workmen of the Motor Industries Co. Ltd. Vs. The Management of the Motor Industries Co. Ltd. Bangalore*, and *Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another*, .

4. The contention of Mr. Ganguli, the learned Counsel for respondent No. 1 on the other hand is that taking overall facts and circumstances into consideration the Labour Court thought it fit that interest of justice would be met by denying the workmen concerned back wages of almost about 10 years and, therefore, the discretion having been exercised properly, it was within the para meters of the scope of interference u/s 11-A of the Industrial Disputes Act and no case is made out for interference by this Court in extra ordinary jurisdiction. Mr. Ganguli relied upon *Scooters India Limited Vs. Labour Court and Others*, *Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another*, , *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, and *Gujarat Steel Tubes Ltd. etc. etc. v. Gujarat Steel Tubes Mazdoor Sabha and others*, 1980 L. I.C. 1004.

5. In *Christian Medical College Hospital Employees' Union and another v. Christian Medical College Vellore Association and others*, the Apex Court after considering its earlier judgment in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, observed that the powers of an Industrial Tribunal to interfere in cases of dismissal of a workman by the management are not unlimited and the Tribunal does not act as a Court of Appeal and substitute its own judgment for that of the management. The Tribunal will interfere (a) where there is want of good faith; (b) when there is victimization or unfair labour practice; (c) when the management has been guilty of the basic error or violation of the principles of natural justice; and (d) when on the materials before the Court the finding is completely baseless or perverse. Emphasis of the Apex Court was that the Industrial Tribunal or the Labour Court cannot function arbitrarily and interfere with every decision of the management as regards dismissal or discharge of a workman arrived at in a disciplinary enquiry. The power u/s 11-A

has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of the management u/s 11-A of the Act only when it is satisfied that the punishment imposed by the management was highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or for that matter the Labour Court has to give justifiable reasons for its decision. The power which section 11-A has conferred upon the Industrial Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal has to be exercised judicially and in accordance with the well settled judicial principles and could not have any colour of arbitrariness nor could be based on fanciful reasons. A three Judge Bench of the Apex Court in Kerala Solvent Extractions Ltd., deprecated the increasing tendency of interference by the Labour Court or Tribunal on the question of punishment based on sympathy and extraneous considerations. The Apex Court thus observed :---

"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."

6. The Supreme Court in Workmen of Motor Industries Company Ltd. (supra) was seized with the question amongst others whether the order of dismissal against three workmen was an act of victimization on the part of the management when admittedly large number of workmen were staging a strike and also instigated others to join the strike. The four acts of misconduct set out against the workmen were : (i) striking or stopping work, (ii) inciting, (iii) riotous and disorderly behaviour, and (iv) loitering about in the company's premises. The management found that the acts of incitement, intimidation and riotous and disorderly behaviour were very grave in nature and, therefore, passed the order of dismissal against these workmen. The Supreme Court observed that the view taken by the management cannot be said to have discriminated against the three workmen concerned nor the dismissal of the three workmen was with an object of victimization. The Supreme Court found that one of the workmen had threatened as to what he and others who were behind him would do to the said officer if he did not comply and even others had tried to lift another officer from his chair to compel him to leave his place of work.

7. Adverting now to the judgments relied upon by Mr. Ganguli, I will first refer to

Gujarat Steel Tubes Ltd., (supra). Mr. Ganguli relied upon paragraph 142 of Gujarat Steel Tubes Ltd., which reads thus :

142. The recent case of Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, , sets out the rule on reinstatement and back wages when the order of discharge is demolished:

"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt this branch of law. The relief of reinstatement with continuity of service can be granted where termination or service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. This is the normal rule. Any other view would be a premium on the unwarranted litigation activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances."

8. In Ved Prakash Gupta, the Supreme Court held thus :

"12. A perusal of the evidence of WW-1 and MW-1 regarding the nature of the

duties performed by the appellant shows that the substantial part of the work of the appellant consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to watch-towers or around the factory or to accompany visitors to the factory and making entries in the visitors' register as regards the visitors and in the concerned registers as regards materials entering or going out of the premises of the factory. It must be noted that MW-1 has admitted in his evidence that there is nothing in writing to show what duties are to be carried out by the appellant. Placed in such a situation the appellant might have been doing other items of work such as signing identity cards of workmen, issuing some small items of stores like torch-cells, etc. to his subordinate watchmen, which can be got from the stores even under the signatures of watchman and filling up application forms of other workmen and countersigning them or recommending advances and loans or for promotion of his subordinates. It must also be remembered that the evidence of both WW-1 and MW-1 shows that the appellant could never appoint or dismiss any workman or order any enquiry against any workman. In these circumstances we hold that the substantial duty of the appellant was only of a Security Inspector at the gate of the factory premises and that it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the appellant is not a workman within the meaning of section 2(s) of the Act is perverse and could not be supported. On the evidence available on record we hold that the appellant clearly falls within the definition of a workman in section 2(s) of the Act and that the reference of the dispute u/s 10(i)(c) of the Act is valid in law.

13. The finding of the Labour Court that the enquiry was fair and proper in the light of its own finding that the Enquiry Officer failed to summon the necessary witnesses and rejected the request of the appellant for challenging the witnesses could not be stated to be correct. On the merits some witnesses were examined on the side of the management before the Labour Court and they are S.K. Bagga, MW-2, Hira Lal, MW-3, Deep Chand, MW-4 and Laxmi Chand, MW-5 an Accountant of M/s. Gurumukh Dass MW-2 has deposed about the appellant abusing Durg Singh who according to the appellant was the Secretary of a Labour Union while the appellant and others were trying to canvass membership for a rival trade union. MWs-3 and 4 are stated to have corroborated the evidence of MW-2. MW-5 is the only independent witness examined on the side of the management. It is seen from the judgment of the Labour Court relating to the merits of the case that MW-5 who has deposed about the challans Exits M-7 and M-8 having been returned to the person who accompanied him from the maintenance department had not supported the management that the appellant abused Durg Singh or any other person within the premises of the factory. It is also seen from the judgment of the Labour Court that though the appellant had produced before the Enquiry Officer 5 sheets of papers with the signatures of

about 100 workmen of the factory in support of the statement that the appellant had not abused anyone in the factory during the course of his service and the management had produced Exhs M-6, a list of 90 persons before the Enquiry Officer, he had not called any of those persons to ascertain the truth regarding the alleged abuse of Durg Singh and S.K. Bagga by the appellant. It is also seen from the judgment of the Labour Court that the appellant was not given a list of the management's witnesses before the commencement of the domestic enquiry. In these circumstances, we are of the opinion that the conclusion of the Labour Court that the Enquiry Officer had not acted properly in the proceedings and that he had not given full opportunity to the appellant as required by law does not call for any interference. The charge levelled against the appellant is not a serious one and it is not known how the charge even if proved would result in any much less total loss of confidence of the management in the appellant as the management would have it in the charge. It was argued in the Labour Court that there was no previous adverse remark against the appellant. There is nothing on record to show that any previous adverse remark against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language Durg Singh and S.K. Bagga. We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service. The appeal is allowed accordingly with costs quantified at Rupees 1,000/-. The writ petition is dismissed without costs."

9. In *Workmen of Bharat Fritz Werner (P) Ltd.*, the Supreme Court observed thus :--

"11. As noticed earlier the workmen concerned in these appeals are twelve in number and they fall in two groups. The first group consists of the seven workmen who had expressed their desire to accept monetary compensation and to settle the dispute on reasonable terms before the Appellate Bench of the High Court. Keeping in view the said desire of these workmen the learned Judges have awarded monetary compensation to these workmen by taking into account the wages and benefits like bonus, ex gratia payment for loss of employment for 52 months, gratuity, leave salary and compensation for loss of future employment. The total amount of monetary compensation that has been awarded to each of these workmen is in the range of Rs. 1 lakh. In Civil Appeals Nos. 4784-4785 (NL) of 1984 filed on behalf of the workmen it was urged by the learned Counsel

for the workmen that the amount that has been awarded as monetary compensation to these workmen is inadequate, and that they should have been awarded the benefits as claimed by them. In this regard, it may be mentioned that from the judgment of the Appellate Bench it appears that these workmen were aggrieved by the order of the learned Single Judge only to the extent of the amount awarded by way of compensation for loss of employment. The Appellate Bench has noticed that, although the order of the learned Single Judge does not give the basis for awarding Rs. 60,000/ to each of the workmen, the said amount was computed by taking into consideration the monthly average wage of each worker as on the date of the order of the learned Single Judge and it was multiplied by 52 months, the period covering from the date of dismissal till the date of the order of the learned Single Judge. In the judgment of the Appellate Bench it has been mentioned that the learned Judges had suggested to the Counsel on both sides that the workmen should be paid, by way of compensation for loss of employment for 52 months, the wages and benefits like bonus, ex gratia payment, gratuity and the like which they could have got if they had continued in service till the date of the order of learned Single Judge and both the Counsel had filed their respective working sheets computing the benefits as suggested. Since there was great variance between the two computations the Appellate Bench, after hearing the Counsel on the both sides, determined the compensation payable under the different heads, namely, wages, bonus, ex gratia payment, gratuity and leave salary. Taking into consideration the fact that the workmen are skilled and they may not find it difficult to get alternative employment, the learned Judges have awarded a sum equivalent to six months wages payable as on the date of the order of learned Single Judge, towards the loss of future employment and have also awarded interest @ 10% on the sum of Rs. 60,000/- awarded by the learned Single Judge for the period from the date of the order of learned Single Judge till payment. All the seven workmen who have been awarded monetary compensation by the Appellate Bench have accepted the same without demur. Moreover we find that during the course of hearing before the Appellate Bench the objection that was raised on behalf of the workmen was with regard to the computation of the amount payable by way of wages, bonus, ex gratia payment, gratuity etc. The learned Counsel for the workmen has not been able to show any infirmity in the determination that has been made by the learned Judge with regard to the amount payable by way of wages, bonus, ex gratia payment, gratuity and leave salary to these workmen. In these circumstances, we do not find any substance in the appeals of the workmen relating to the amount of monetary compensation that has been awarded to this group of seven workmen."

"18. Ever since the decision of the Federal Court in AIR 1949 111 (Federal Court) the settled position in law is that the industrial tribunal has the jurisdiction to direct reinstatement in appropriate cases. In a case of wrongful dismissal the normal rule adopted in industrial adjudication is to order reinstatement. There are, however, exceptions to this rule and even when it is found that the dismissal

was wrongful the workman has been denied reinstatement for the reason that it would not be expedient to direct reinstatement."

"2.1. Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of trust and confidence, or when, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interests of the industry, Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, . In cases where it is felt that it will not be desirable or expedient or (to) direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement for loss of future employment.

"22. The misconduct that has been found established against these five workmen involves threatening the highest executive, viz. the President of Company, with dire consequences, wrongfully confining him in his room and compelling him to withdraw the notice. These acts of misconduct involve acts subversive of discipline on the part of these workmen. Three of these workmen were office bearers of the Union. It cannot be said that these workmen had acted at the instigation of somebody. Taking into consideration the facts and circumstances of the case, we are of the opinion that, keeping in view the interests of the industry, this is a case where it can be said that it is not desirable and expedient to direct reinstatement of these workmen. In our view, therefore, the direction with regard to reinstatement of these workmen cannot be sustained and in lieu of reinstatement they may be paid compensation for loss of future employment."

10. The Supreme Court in Scooter India Limited was concerned with SLP arising out of an order/judgment of the High Court whereby the High Court while sustaining the award passed by the Labour Court adverted to section 6(2-A) of U.P. Industrial Disputes Act which is analogous to section 10-A of the Industrial Disputes Act, 1947 pointed out that the said section conferred wide powers on the Labour Court to interfere with the order of discharge or dismissal of a workman and to direct the setting aside an order of discharge or dismissal and ordering reinstatement of the workman on such terms and conditions as it may think fit including substitution of lesser punishment as the circumstances of the case may be, require. The Apex Court affirming the judgment of the High Court held thus :

"7. The High Court has considered at length the nature of the powers conferred on the Labour Court by section 6(2-A) of the Act for setting aside an order of discharge or dismissal of a workman and substituting it with an order of lesser punishment and as such it cannot be said that the High Court has failed to consider the facts in their entirety. As regards the third contention, we may only state that the Labour Court was not unaware of the nature of the charges framed against the respondent or the findings rendered by the Inquiry Officer and the acceptance of those findings by the Disciplinary Authority. The Labour Court has

observed as follows :---

"The workman has unfortunately to blame himself for much of the bad blood which has developed between him and the management and therefore his conduct, motivated by ideals which are not relevant has been far from satisfactory. In so far as it was rough, bordering on rudeness and with highly exaggerated sense of his duties. In these circumstances it will meet the ends of justice if back wages to the extent of 75% are allowed to the workman. I would make my award accordingly but there shall be no order as to costs."

It cannot therefore be said that the Labour Court had exercised its powers u/s 6(2-A) of the Act in an arbitrary manner and not in a judicial manner. The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner company. It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers u/s 6(2-A) of the Act."

11. It goes without saying and legal position appears to be well settled after introduction of section 11-A in the Industrial Disputes Act that the Labour Court or Industrial Tribunal or National Tribunal has wide powers to mould and give proper reliefs in case of discharge or dismissal of workman. If an industrial dispute relating to discharge or dismissal of workman is referred to a Labour Court or for that matter to Industrial Tribunal or National Tribunal for adjudication and during the course of adjudication proceedings the concerned Labour Court or Tribunal is satisfied that the order of discharge or dismissal was not justified, such Labour Court or Tribunal has ample power to set aside the order of discharge or dismissal or direct reinstatement of the workman on such terms and conditions as it may think fit or may give such reliefs to the workman including award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. However, the power given to the Labour Court or Industrial Tribunal or National Tribunal in section 11-A is not in the nature of unruly horse and cannot be exercised as an appellate forum over the findings given by the disciplinary authority. The power exercisable by the Labour Court or the Industrial Tribunal or the National Tribunal u/s 11-A cannot be exercised in an arbitrary manner or in a fanciful way or in a colour of capriciousness. If the disciplinary authority has awarded the punishment of dismissal or discharge commensurate with the gravity of the offence which has been duly proved in the enquiry and neither the enquiry proceedings are vitiated by any error of law nor findings of the gravity of the charge suffer from any error and the award of punishment is commensurate with the gravity of charge, I am afraid the Labour Court or the Industrial Tribunal in exercise of its power u/s 11-A cannot substitute such just punishment by observing that it is unjustified. The exercise of the powers by the Labour Court or the Industrial Tribunal u/s 11-A

has to be in the nature of the power that may be exercised by any supervisory authority but not as an appellate authority. The exercise of the power u/s 11-A therefore has to be within its frame work and should not exceed its power by passing arbitrary or fanciful orders. Jurisdiction of the Labour Court or of the Industrial Tribunal u/s 11-A though very wide yet not as wide as the appellate forum is always circumscribed by the power that may be exercised by supervisory authority. The limitations of the power of the Labour Court or the Industrial Court have been explained by the Apex Court from time to time and some of the decisions which require special reference are Indian Iron and Steel Company (supra) and Christian Medical College Hospital Employees' Union (supra). In Indian Iron Steel Company Ltd., the Apex Court observed that power of Industrial Tribunal to interfere with the cases of dismissal of workmen by the management are not unlimited and the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management. The para meters within which such interference could be had by the Labour Court or Industrial Tribunal are the lack of good faith on the part of the employer, victimization or unfair labour practice of the employer, or where the management has been guilty of basic error of violation of principles of natural justice or whether the finding recorded by the Enquiry Officer is completely baseless or perverse on the face of the record before the Labour Court or the Industrial Tribunal. In Christian Medical College Hospital Employees' Union the Apex Court highlighted that introduction of section 11-A in the Industrial Disputes Act does not confer an arbitrary power on the Industrial Tribunal or Labour Court and the power u/s 11-A of the Act has to be exercised judicially. The Labour Court or the Industrial Tribunal is expected to interfere with the decision of the management u/s 11-A only when it is satisfied that the punishment imposed by the management was highly disproportionate to the degree of the guilt of the workman concerned. The Industrial Court or the Labour Court therefore has to give reasons as to how the punishment imposed by the management is grossly disproportionate to the degree of the guilt.

12. Applying the aforesaid legal position if I turn to the facts it would be seen that the concerned workmen were charged of commission of an act subversive of discipline or good behaviour on the premises of the establishment and in an enquiry on the basis of the evidence on record the Enquiry Officer found that acts of gheraoing the officers, abusing them, threatening them, etc. have been established. The Enquiry Officer also found that the concerned employees gheraoed three officers of the company from 1.00 p.m. to 5.00 p.m. on 5.2.1984 and resultantly the said three officers were prevented from taking water, tea, food, etc. The Enquiry Officer also found that the concerned workmen threatened the officers from going out of the cabin. The concerned workmen were also charged of an illegal strike or abetting, inciting, instigating or acting in furtherance thereof. The Enquiry Officer also found that the charge has been proved to the extent that the concerned employees left their place of work, collected other workers from different departments and remained away from

their places of work from 1.00 p.m. to 5.00 p.m. on 5.2.1984 and therefore they were involved in the act of strike. There is no dispute now that the enquiry conducted against the workmen concerned was fair and proper and has been found to be so also by the Labour Court in the Part I award. The Labour Court also found as fact that the concerned employees used abusive language against the higher officers. In addition thereto the concerned workmen gheraoed the officers from 1.00 p.m. to 5.00 p.m. and during that period of gherao the said officers were prevented from going to toilet, or from drinking water or from taking lunch. The Labour Court has also held that by their acts, the concerned workmen tortured and humiliated the officers by shouting in filthy and abusive language. The Labour Court thus concluded that the concerned workmen indulged in serious misconduct. If that be so, and moreover without any reasons assigned by the Labour it is difficult to appreciate why for the gross misconduct which has been proved against the concerned workmen, the punishment of dismissal was grossly disproportionate. As a matter of fact in the entire order no reasons are assigned by the Labour Court as to why the punishment of dismissal was disproportionate to the finding of the charge of gross misconduct. The Labour Court after holding that no doubt the acts on the part of the concerned employees were serious misconduct, jumped to the conclusion that since the incident took place on 5-2-1984 i.e. before 10 years and the employees are out of employment for 10 years, rejecting their prayer for back wages would be proper punishment against them. I am afraid there cannot be more arbitrariness than such order. The Labour Court interfered with the punishment awarded by the disciplinary authority but did not set out the reasons why the punishment awarded by the disciplinary authority was not just. It is only where the Labour Court or the Industrial Tribunal finds as a fact that the punishment of dismissal or discharge awarded by the disciplinary authority not just, power can be exercised by the Labour Court or the Industrial Tribunal u/s 11-A to give appropriate reliefs in exercise of its power and jurisdiction u/s 11-A. In *Christian Medical College Hospital Employees' Union* the Apex Court held thus :

"The power u/s 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management u/s 11-A of the I.D. Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilty 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 of Labour Courts is again, as already said, subject to judicial review by the High Court and this Court."

If no reasons are assigned by the Industrial Tribunal or Labour Court while interfering with the punishment awarded by the disciplinary authority, the High Court may not be in a position to Judge its correctness within the parameters of judicial review and, therefore, it is all the more necessary that the Labour Court assigns reasons if it intends to deviate from the punishment awarded by the disciplinary authority.

13. Mr. Ganguli, the learned Counsel for respondent No. 1, relied upon the observations made by the Apex Court in *Scooter India Limited*; "The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the company," and submitted that if the Labour Court showed mercy, no case for interference is made out by this Court. I am afraid, the aforesaid observations are read by the learned Counsel out of context. In *Scooter India Limited*, after considering the facts and circumstances of the case and the observations made by the High Court, the Apex Court found that it cannot be said that the Labour Court had exercise its power u/s 6(2-A) of the Act (equivalent to section 11-A of the Industrial Disputes Act) in an arbitrary manner and not in a judicious manner. Obviously if the Labour Court has not acted in arbitrary or not in judicious manner, question of its interference would not arise.

14. In suitable cases, mercy can be supplement to the justice but it cannot supplant justice. The Apex Court in recent judgment of *Kerala Solvent Extractions Ltd.* observed that the reliefs granted by the Labour Court or the Industrial Court 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.

15. Mr. Ganguli, the learned Counsel for the respondent also heavily relied upon the observations made by the Apex Court which I have already quoted above in *Ved Prakash Gupta*. It is true that the said case relates to a misconduct of an employee for using filthy, derogatory and abusive language. The Supreme Court observed that the Enquiry Officer had not acted properly in the proceedings and he has not given full opportunity to the delinquent as required by law. The delinquent before the Labour Court submitted that he had produced before the Enquiry Officer five sheets of papers with the signatures of 100 workers of the factory in support of the statement that he has not abused anyone in the factory during the course of his service. Taking the totality of the circumstances the Apex Court observed that the misconduct was not serious. The present is the case where not only abusive language was used by the concerned workmen but they gheraoed their officers and the said officers were prevented from going to toilet or from taking water or from taking lunch. The officers were thus humiliated and tortured by shouting in filthy and abusive language for almost more than four hours. The act of the concerned workmen has been held to be serious misconduct both by the disciplinary authority as well as by the Labour Court and, therefore, the case of *Ved Prakash* has no application in the facts and circumstances of the present case.

16. For all these reasons, the award passed by the 9th Labour Court on 6-8-1994 cannot be sustained and has to be set aside which I hereby order. Resultantly, reference stands answered in the negative. Rule is made absolute in aforesaid

terms. No costs.

17. Petition allowed.