
(2013) 12 AP CK 0128

In the Andhra Pradesh High Court

Case No : W.A. No's. 1586 and 2200 of 2005

VST Industries Ltd.

APPELLANT

Vs

G. Om Prakash and Another

RESPONDENT

Date of Decision : 24-12-2013

Acts Referred:

Citation : (2014) 2 ALT 115

Hon'ble Judges : Dama Seshadri Naidu, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : C.R. Sridharan, for the Appellant; G. Vidyasagar, Counsel, for the Respondent

Judgement

Dama Seshadri Naidu, J.—The former of the two writ appeals, Writ Appeal No. 1586 of 2005, was filed by the Management, and the latter, Writ Appeal No. 2200 of 2005, by the Workman, both assailing the same Judgment, dated 28.04.2005, in W.P. No. 23516 of 1996, whereby and whereunder, a learned Single. Judge modified the Award, dated 21.06.1996, in I.D. No. 599 of 1993 passed by the 2nd respondent-Labour Court. In fact, when the 1st respondent raised an industrial dispute questioning the orders of dismissal dated 24.09.1992 passed by the appellant Company, the 2nd respondent Labour Court set it aside and directed the appellant Company to appoint the 1st respondent afresh as a general worker in the respondent Company without entitlement either for back wages or for continuity of service. When the matter was taken to this Court, the learned Single Judge, in turn, has further modified the award of the 2nd respondent Labour Court to that of compulsory retirement. Thus, assailing the judgment, dated 28.04.2005, in W.P. No. 23516 of 1996, both the appellant Company and the 1st respondent workman filed the above two writ appeals.

2. Both these writ appeals are being disposed of through a common Judgment, since both appeals have arisen out of the same Judgment, involving the same issues of fact and law, between the same parties.

3. Culling out the facts from W.A. No. 1586 of 2005, based on which the nomenclature is assigned to the respective parties, it is to be stated in brief that the appellant Company has been engaged in the business of manufacturing and sale of cigarettes with a workforce of about 1800 workmen. The 1st respondent, having joined the appellant Company on 07.12.1970 as a General Worker, at the earliest point of his career, about three years after his appointment, in June 1993 (sic. 1973), was charge sheeted for an act of misconduct; to wit, theft. To elaborate, the gist of the allegation is that the respondent workman was in wrongful possession" of company"s property, i.e., four (4) loose Charminar cigarettes (Charminar being the brand name), as was found by the watchman at the exit gate.

3-A. Having held the charge proved, the appellant management, as a measure of punishment, suspended the delinquent workman for a period of one day with a warning that repetition of misconduct would entail a severe penalty.

4. Later after about 20 years, the 1st respondent again faced an allegation of possessing a packet of 10 cigarettes without the leave of the management. To dilate upon the charge, on 07.07.1992, at about 7-35 a.m., one of the officials of the appellant Company found the 1st respondent moving under suspicious circumstances in the parking area of the Company. When he was checked in the presence of another security person, the 1st respondent himself took out from the hip pocket of his trousers Charms Mini Kings 10s Cigarettes (one packet). In response to the charge sheet served on the 1st respondent, he submitted his explanation dated 18.07.1992 admitting to the effect that he was habituated to smoking and that he took one packet of cigarettes which was lying on the shop floor and hurriedly proceeded towards the gate. Having not been satisfied with the explanation submitted by the 1st respondent, the appellant Company went ahead with the disciplinary proceedings. The 1st respondent workman, in fact, fully participated in the enquiry, during the course of which the 1st respondent took a different stand that the very security officer who checked him initially gave him the said packet of cigarettes, but when another security officer approached them he pushed the blame on the 1st respondent, making him a scapegoat. However, having disbelieved the version of the 1st respondent, eventually the disciplinary authority found the 1st respondent guilty of the charge under Factory Standing Order 22(2)(d), as per which the punishment of dismissal from service was imposed on the 1st respondent through order dated 24.09.1992.

5. Aggrieved by the order of dismissal from service, the 1st respondent raised an industrial dispute in I.D. No. 599 of 1993 before the 2nd respondent. After finding that the charge of misconduct in terms of Factory Standing Order 22(2) (d) was proved in the departmental enquiry, the 2nd respondent Labour Court, however, found the punishment of dismissal from service for the alleged offence of stealing a packet of cigarettes grossly disproportionate to the gravity of the alleged offence. Accordingly, through Award dated 21.06.1996 in I.D. No. 599 of

1993, modified the punishment imposed by the appellant by directing the appointment of the 1st respondent afresh without any back wages or attendant benefits, including the continuity of service. As a result, the appellant Company invoked the certiorari jurisdiction of this Court and filed W.P. No. 23516 of 1996. After an elaborate appreciation of all the aspects of the case, the learned Single Judge through judgment, dated 28.04.2005, partly allowed the writ petition by directing the appellant Company to retire the 1st respondent herein compulsorily from service with effect from 24.09.1992, and to settle all the amounts for which the 1st respondent was entitled to, rather than have the 1st respondent reinstated into service afresh. In the manner stated above, both the management and the workman have been aggrieved by the impugned judgment of the learned Single Judge.

6. Sri C.R. Sridharan, learned counsel for the appellant Company, has strenuously contended that the 2nd respondent Labour Court has entirely agreed with the findings of the disciplinary authority, and as such, in the first place, it ought not to have interfered with the well considered findings of the disciplinary authority. There was no occasion either for the learned single Judge or for the Labour Court to impose its own mode of punishment, when the charges levelled against the 1st respondent have been held proved concurrently. It is the specific contention of the learned counsel for the appellant that in a proven case of theft, it being one of the gravest allegations of misconduct, the management has fully been justified in losing confidence on the employee concerned, and that it would thus be justified in dismissing such employee from service. Instead of correcting the grave error committed by the Labour Court in interfering with the punishment of dismissal imposed by the appellant Company under the garb of exercising its jurisdiction u/s 11A of the Industrial Disputes Act, 1947 ("the Act" for brevity), the learned Single Judge, exercising the power of judicial review under Article 226 of the Constitution of India, embarked upon re-appreciation of the entire material, which is impermissible. The learned counsel has further submitted that neither the length of service nor any factor of sympathy is a judicially sustainable ground to hold in favour of a delinquent workman, more particularly when the said workman is charged with a grave offence of misconduct, such as theft.

7. The learned counsel, in the first place, has contended that the reasons cited by the Labour Court while taking recourse to Section 11A of the Act to interfere with the punishment imposed by the appellant, are entirely extraneous and are not germane. Though there are no circumstances to mitigate the gravity of misconduct, which conclusively stood proved against the 1st respondent, even the learned Single Judge has erred in re-appreciating the material and substituting a punishment of its own choice, when, in the fitness of things, the punishment imposed by the management ought to have been restored. The learned counsel has laid specific stress on the fact that even in 1973, the 1st respondent was charged with misconduct and as it was the first time, he was let off with a minor punishment, as well as censure to the effect that any repetition

of the misconduct would be viewed seriously. Both the Labour Court and the learned single Judge, it is contended, have failed to take this aspect into account, and on the contrary, have largely been swayed by the factors of sympathy, which is impermissible in law.

8. Summing up his submissions, the learned counsel has submitted that though he has placed reliance on various judgments of the Hon'ble Supreme Court, despite appreciating all of them in their correct perspective, the learned Single Judge has failed to apply them to the facts of the case. The learned counsel has also taken pains to take us through the entire gamut of judicial review, the scope of certiorari and also the desirability of giving sufficient leverage to the management in the matters of disciplinary proceedings, more particularly when it is a matter of having faith or confidence on the workman. Eventually, the learned counsel has urged this court to set aside the judgment dated 28.04.2005 in W.P. No. 23516 of 1996 and to restore the punishment of removal from service initially imposed on 24.09.1992 by the appellant Company.

9. Per contra, Sri G. Vidyasagar, learned counsel for the 1st respondent workman, apart from opposing the contentions of the learned counsel for the appellant Company, has on his part assailed the judgment of the learned Single Judge contending that u/s 11A of the Act, the Labour Court has powers, which are very wide, and, ipso facto, the award of the Labour Court ought not to have been disturbed by the learned Single Judge, especially when the adjudication is under Article 226 of the Constitution of India. The learned counsel has contended that there is no substance in the allegations levelled against the 1st respondent, as the entire charge, even on its admission, would not amount to theft. Without conceding on the aspect of misconduct levelled against the 1st respondent workman, the learned counsel has submitted that if at all there were to be any misconduct on the part of the 1st respondent, it was using for his own consumption the property belonging to the appellant company within the premises, without express consent though. As such, it cannot be termed as theft. On appreciation of the entire material, the Labour Court, it is contended, has come to a just and proper conclusion that the punishment imposed was shockingly disproportionate. Thus, exercising its powers u/s 11A of the Act, the Labour Court has set aside the grossly unjustified and disproportionate order of dismissal and substituted in its place the modified punishment of appointing of the 1st respondent afresh without any back wages or attendant benefits, including the continuity of service.

10. The learned counsel has also submitted that though the 1st respondent had initially been aggrieved by the order of the Labour Court since he had been deprived of all the service benefits such as back wages, continuity of service, yet, to have industrial peace and to put a quietus to the frivolous charge, the 1st respondent did not choose to assail the said modified order of the Labour Court. Under those circumstances, it is submitted, the learned single Judge ought not to have further aggravated the punishment imposed by the Labour Court by way of

modification, thus depriving all the benefits to the 1st respondent workman despite his long service and blemish less conduct for more than two decades. Summing up his submissions, the learned counsel for the 1st respondent has urged this Court to set aside the Judgment, dated 28.04.2005, in W.P. No. 23516 of 1996, and to restore the award dated 21.06.1996 in I.D. No. 599 of 1993 of the 2nd respondent Labour Court.

11. Heard the respective learned counsel for the appellant and 1st respondent, apart from perusing the record.

12. To fathom the gravity of the misconduct the 1st respondent has been charged with, it may be appropriate to extract the charge, as borne out by the charge sheet-cum-show cause notice, dt. 14-07-1992:

It is reported against you that on 7.7.92 at about 7.35 a.m. Lance Naik Abdullah Khan (D-29) found you moving under suspicious circumstances near MR cycle Parking area. Later on, he escorted you to Watchman's room. Mr. J.N. Nageswara Rao in turn called the IC Shift No. 3 of Finishing Department Mr. V.S. Mohar to come to the same room. Thereafter, Mr. Nageswara Rao asked you to take out whatever you had in your possession. Then, you took out one CMK 10's packet of cigarettes (which is Company's property) from the pant hip pocket. The said CMK 10's cigarette packet was confiscated, wrapped in a paper packet and sealed with gum tape in your presence. All those who were present, including yourself, signed on the sealed packet.

Your above conduct, if proved, amounts to theft, fraud or dishonesty in connection with the company's business or property which is an act of misconduct under clause 22(2)(d) of the Factory Standing Orders applicable to you.

13. Referring to the Factory Standing Orders (FSOs), it is to be stated that they are binding on employer and workmen, since they are statutorily imposed conditions of service. Indisputably, the most important use of Standing Orders is in case of disciplinary action. A workman can be punished only if the act committed by him is a misconduct as defined under the Standing Orders. Thus, acts like insubordination, disobedience, fraud, dishonesty, damage to employer's property, taking bribe, habitual absence or habitual late attendance, riotous behavior, habitual neglect of work, strike in contravention of rules etc., are termed as instances of misconduct. Since Clause 22(2)(d) of the FSO speaks of fraud or dishonesty in connection with the Company's business property, the learned counsel for the 1st respondent has, in fact, submitted that there was neither fraud nor dishonesty inasmuch as the 1st respondent was found having a packet of cigarettes on his person within the factory premises, and that the 1st respondent did not make any effort to leave the premises so as to be accused of theft by way stealing away or secreting off the property. In other words, there was no clandestine effort on the part of the 1st respondent.

14. The 2nd respondent labour court has, in any event, held that the charge

against the first respondent that he was in possession of the appellant's property constituting to be a misconduct as per clause 22(2)(d) of FSO is proved beyond reasonable doubt. Having said that, the second respondent Labour Court went further and examined the proportionality of the punishment inflicted on the first respondent in terms of the gravity of misconduct the first respondent had been charged with. Thus, the Labour Court has held that the punishment awarded to the first respondent, who served the appellant company for 22 years with, of course, one earlier punishment of warning, is not reasonable and not proportionate to the gravity of misconduct proved against the first respondent. Accordingly, the order of dismissal dated 24.9.1992 passed by the appellant against the first respondent was set aside and the appellant was further directed to appoint the first respondent afresh as a general worker in the appellant company. This fresh appointment is without entitlement for any back wages, not to speak of continuity of service or other attendant benefits.

15. When the matter was taken to this Court in W.P. No. 23516 of 1996, while modifying the Award of the Labour Court, the learned Single Judge has observed as follows:

The fact remains that the charge was only as to attempt to commit theft within the premises of the factory. Even it is the case of the petitioner-management that the workman was found in suspicious circumstances at the toilets and he was taken to the canteen room by the security personnel. It was also not in dispute that he was put on factory uniform and the cigarette packet was found in the hip pocket of his pant and that he had no gate pass to go out of the premises. The facts and circumstances of the case, though there was some evidence, did not inspire the Labour Court to accept the punishment of dismissal from service. Admittedly, the workman rendered 22 years of service and even if the earlier misconduct is taken into consideration, this is definitely not a case requiring the punishment of dismissal from service of the workman. The Labour Court, in fact, exercised its jurisdiction u/s 11A of the Act properly, since the punishment of dismissal of the workman from service is shockingly disproportionate to the misconduct proved. The Labour Court has explained the circumstances under which it had to exercise the powers u/s 11A of the Act. In the writ jurisdiction under Article 226 of the Constitution of India, it may not be proper on the part of this Court to reverse the Award passed by the Labour Court and uphold the order of dismissal passed by the management for insignificant errors, if any committed. Therefore, all the decisions relied upon by the learned counsel for the petitioner saying that however small the value of the property involved, the only punishment that requires to be imposed on the workman was dismissal from service, since it has lost confidence in him, cannot be applied to this case. The said decisions have no relevance to the facts of this case. The charge was blown out of proportion by the management while imposing the punishment of dismissal from service. However, since the management has expressed that it had lost confidence in the workman, this Court is of the opinion that the Labour Court instead of directing fresh appointment as a general worker, ought to have

directed the petitioner-management to retire the workman compulsorily and settle all his dues flowing therefrom.

16. On appreciation of the rival submissions, it may have to be observed that the charge levelled against the first respondent is to the effect that on 7.7.92 at about 7.35 a.m. one of the security officers of the appellant found the first respondent moving under suspicious circumstances within the factory premises. When the first respondent was asked about what he had in his possession, he took out one CMK 10s packet of cigarettes (one packet), which is Company's property. Would the conduct, if proved, amount to theft, fraud or dishonesty in connection with the company's business or property? In any event, even taking it as an attempt, or as an act of dishonesty, or an incipient act of theft, it is said to be an act of misconduct under clause 22(2)(d) of the FSO. It may have to be appreciated that it has not been specifically stated whether it is a theft, fraud or dishonesty, but all the expressions had been employed in the charge rather interchangeably, thus vaguely, though.

17. Insofar as the expression "theft" is concerned, it is statutorily defined u/s 378 of the Indian Penal Code, to the effect that whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Fraud, on the other hand, can be said to be the crime of deceiving somebody in order to get money or goods illegally. Dishonesty is the behavior that involves doing things that are not honest, for example lying, stealing or cheating. (Oxford Learner's Thesaurus ? Oxford University Press, 2008.)

18. Going by the above definitions, the charge levelled against the 1st respondent may amount to an act of dishonesty, not ripening to theft or fraud.

19. In the light of the above facts and circumstances, now the authorities relied on by the learned counsel for the appellant may be examined. First, the learned counsel has placed reliance on Ruston and Hornsby (I) Ltd. Vs. T.B. Kadam, as reported in, to drive home the point that even an attempt to steal is a grave misconduct. In the said judgment, a three Judge Bench of the Hon'ble Supreme Court has held in para 4 as follows:

4. The Labour Court took the view that the charge of suspected dishonesty in connection with the Company's property did not constitute any misconduct either under Standing Order 24 or otherwise and therefore no action could be taken against the respondent on the basis of that charge, and also that the charge-sheet was vague. We can see no vagueness in the charge-sheet and on the basis of the facts set out above there could be no doubt that the charge is one of an attempt to steal the Company's property. The respondent being a watchman the charge is a serious one and if it was held proved he deserves nothing short of dismissal.

20. The above observations may have to be appreciated in the face of the charges levelled against the delinquent workman therein. The charges were:

- (1) Suspected dishonesty in connection with the Company's property.
- (2) Gross negligence in performance of his duties.
- (3) Disobedience of instructions given by the superiors.
- (4) Commission of an act subversive of discipline.

21. Further, it may have to be observed that the delinquent workman was himself a security guard, who made a serious attempt to steal some material. In the present instance, there is no element of theft as such, but, as had initially been admitted by the 1st respondent, he picked up a packet of cigarettes lying on the factory floor for his own consumption. There is no pecuniary element involved to aggravate his action treating it as theft.

22. The next authority relied on by the appellant is a Division Bench judgment of the Madras High Court in *Sri Gopalakrishna Mills Pvt. Ltd. Vs. Labour Court and Another*, in which it is held:

14. As regards the fifth reason that the second respondent has put in 8 years of service and he is unmarried we are definitely of the view that this is not a proper ground for the Labour Court for interfering with the penalty imposed by the management. When a workman is charged for a serious misconduct as in this case, one cannot go by the number of years of service put in by the workman or by the workman or by his age or by his married or unmarried status...

23. In the present instance, though initially the Labour Court, perhaps, went by the criterion of length of service, in the light of doctrine of merger, as the award stood merged with the order of the learned Single Judge, that plea may not be available to the appellant. That apart, it is not the length of service that alone weighed in the decision making, it is, on the other hand, the proportionality principle that mattered.

24. The appellant has placed further reliance on a Full Bench judgment of this Court in *G.R. Reddy Vs. Presiding Officer, Labour Court, Godavarikhani and Another*, wherein their Lordships have held:

4. For all these reasons, we are of the opinion that in cases of misappropriation of public funds, whether the sums so misappropriated are small or large, deterrent punishment is always called for in the interest of administration and what should be the appropriate punishment in the circumstances of each case, should always be left to the discretion of the disciplinary authority and the High Court while exercising judicial review under Article 226 of the Constitution of India shall not interfere and substitute itself as a Court of appeal. In this view of the matter, we do not find any merit in these Writ Appeals.

25. On facts, in the above case, the Full Bench prefaced its findings with the following observations:

Large number of cases, day in and day out, are filed resorting to proceedings

under Article 226 of the Constitution of India, contending that a Bus Conductor of a Road Transport Corporation, or employee of a Public Sector Undertaking, or even a Government servant who has misappropriated small sum, when found that he is guilty, should be treated leniently while awarding punishment. This vexed question has been agitating this Court.

26. Having made the above prefatory observation, the Full Bench has held that the Court while exercising the power of judicial review under Article 226 of the Constitution cannot lightly interfere with the punishment imposed by the disciplinary authority, since the High Court does not sit as a Court of appeal over the decision of the authority holding domestic enquiry against a public servant. It is not open to the High Court to reappraise the evidence and to arrive at an independent conclusion on the evidence adduced in the case. However, the grey area where the High Court can interfere is only where during the course of departmental proceeding, principles of natural justice were violated causing prejudice to the delinquent officer. The High Court may interfere with the punishment when the same is shockingly disproportionate to proven guilt or on misconduct no reasonable prudent man would award such a punishment which is so arbitrary and unreasonable attracting application of Article 14. In such circumstances, it is held, the High Court may well be justified in treating such cases as amounting to discrimination calling for redressal under Article 14 of the Constitution of India. In deed, in the present case, exercising its powers u/s 11A of the Act, under which it can re-appreciate the evidence and come to a different conclusion, the 2nd respondent Labour Court has found the punishment of dismissal of service shockingly disproportionate to the proven misconduct.

27. In U.P.S.R.T.C. Vs. Pukhraj Singh and Others, the Supreme Court has held:

6. Once the Labour Court came to the conclusion that the action of the appellant in terminating the services of the first respondent was justified, legal and valid and he was not entitled to any benefit, we are unable to understand wherefrom the Labour Court drew the jurisdiction to require the appellant to engage the first respondent in a post other than as a driver. It is one thing to hold in a given case that the punishment imposed by the employer is very harsh and to substitute something less. It is altogether different, and untenable, to find that the employer has validly and legally terminated the services of the employee and that the latter is not entitled to any benefit and yet to require the employer to engage the employee in some other post.

(emphasis added)

28. In fact, in the present case, the learned Single Judge has set at naught the order of the Labour Court, which, having found the charge to have been proved, directed the appointment of the first respondent afresh. In any event, even the Labour Court interfered with the punishment, awarded by the disciplinary authority only on the principle of disproportionality.

29. In S.A. Gani Vs. Chairman and Presiding Officer, Labour Court-I, Hyd., a

Division Bench of this Court has held:

2. The only point urged by the learned Counsel for the appellant is regarding the quantum of punishment. It is contended that for the misappropriation of trivial amount of Rs. 3.50, the extreme punishment of removal ought not to have been awarded. We cannot accept the contention of the learned Counsel for the appellant. It is a case in which the Tribunal in exercise of its powers u/s 11A, did not consider it to be a fit case to reduce the punishment. The Tribunal has given relevant reasons. The view taken by the Tribunal that the punishment was not excessive or disproportionate, cannot be said to be perverse, even assuming that the Tribunal could have exercised the discretion more liberally. The penalty imposed on the employee and upheld by the Tribunal cannot be said to be so grossly disproportionate to the gravity of charge proved so as to shock the conscience of the Court. The award of the Tribunal cannot be said to be vitiated by any jurisdictional error or an apparent error of law. It is not possible for this Court to substitute its own opinion on the question of punishment so long as the punishment imposed is not so wholly unreasonable as to shock the conscience of the Court. The learned single Judge was therefore justified in not entertaining the writ petition under Article 226 for the purpose of re-examining the aspect of punishment.

(emphasis added)

30. Based on the above observations, though the decision was cited by the learned counsel for the appellant, it is, in fact, more in tune with the submissions made by the 1st respondent, if at all.

31. The next judgment relied on by the learned counsel for the appellant is U.P. State Road Transport Corporation Vs. Mohan Lal Gupta and Others, In this case, the Labour Court cancelled order of termination and imposed a minor penalty in regard to gross acts of misdemeanor. When High Court summarily rejected the Appeal, the employer approached the Supreme Court. It was held that the Labour court could not alter punishment having regard to its assessment of facts and inquiry proceedings, once employee had been found to be guilty of misappropriation. It was further observed that if Appellant-Corporation lost its confidence vis-?-vis employee, it would be neither proper nor fair on the part of Court to substitute the finding.

32. Similar in scope and content is the judgment in Depot Manager Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, It may have to be observed, in those cases the delinquent workmen were held to have misappropriated public funds while collecting the fare from the passengers. In other words, the workmen were holding posts of trust, and had been working in a fiduciary capacity. The same principle cannot, in our view, imported here, as the facts are entirely different.

33. In Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others, the Hon'ble Supreme Court has held that it could not agree with the finding of the

High Court that the Labour Court had unlimited powers u/s 11A of the Act. In that context it is held:

14. With respect, we are unable to agree with these findings of the High Court. In our opinion, there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum. An unfettered discretion is a sworn enemy of the constitutional guaranty against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority be it an administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.

34. It is nobody's case here to assert that either the Labour Court has claimed itself to have unlimited jurisdiction u/s 11A of the Act, nor has the learned Single Judge upheld the award of the Labour Court on affirmation of such a view. Even on factual aspect, the allegations faced by the delinquent employee in the above cited case are grave, inasmuch as he was said to have stolen documents, and to cover it up, further fabricated documents.

35. Another judgment relied on by the learned Counsel for the appellant is Municipal Council, Sujapur Vs. Surinder Kumar, wherein their Lordships have held:

8. The High Court's jurisdiction to issue a writ of certiorari though is limited, a writ of certiorari can be issued if there is an error of law apparent on the face of the record. What would constitute an error of law is well known. In the Judicial Review of Administrative Action, IVth edition p. 136, S.A. De Smith has summed up the position:-

The concept of error of law includes the giving of reasons that are bad in law or (if there is a duty to give reasons) inconsistent, intelligible or, it would seem, substantially inadequate. It includes also the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence.

36. Indeed, the learned Single Judge did exercise the power of judicial review by way of certiorari in favour of the appellant and modified the award of the Labour Court. In fact, the learned Single Judge has deemed, while exercising judicial discretion, it proper to interfere with the award, inasmuch as the Labour Court, having held the charge proved, directed fresh appointment. In any event, the learned Single Judge, exercising powers under Art. 226, the judicial precedents regarding the scope of which are a legion, restored the balance by further modifying the order as has already been stated above.

37. Finally, the learned Counsel has placed reliance on Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, Holding that grant of relief of

reinstatement or back wages is not automatic, their Lordships of the Supreme Court have held:

11. Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The Industrial Courts while exercising their power u/s 11A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment, viz., whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned etc., should be taken into consideration. For the purpose of grant of back wages; one of the relevant factors would indisputably be as to whether the workman had been able to discharge his burden that he had not been gainfully employed after termination of his service.

...

8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

38. The above proposition of law is too well established to brook any contradiction. That apart, the above legal principle, in our considered opinion, has not, suffice it to say, found violated in the present proceedings.

39. To conclude, invoking the dictum of the Hon^{ble} Supreme Court in *Municipal Council, Sujampur v. Surinder Kumar* case (supra), as cited by the learned counsel for the appellant, we recall the admirable administrative aphorism enunciated by the learned author and erudite scholar S.A. de Smith in his *Judicial Review of Administrative Action*, (IVth edition p. 136), we hold, that the

judgment, dated 28.04.2005, in W.P. No. 23516 of 1996 does not suffer from any jurisdictional error, much less any error apparent on the face of record, as well as any perversity of finding. As such, it is inappropriate to re-appreciate the evidence while exercising an intra-court appeal and upset what are otherwise well considered findings of the learned Single Judge. Accordingly, both the writ appeals, one filed by the management and another by the workman, deserve to be dismissed, and accordingly are dismissed. No orders as to costs. As a sequel, miscellaneous petitions, if any pending in these writ appeals, shall stand closed.