

Divisional Manager, Apsrtc and Another Vs. E. Raja Reddy and Another

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Court : Andhra Pradesh

Decided On : Oct-04-1999

Reported in : 1999(5)ALD735; 1999(5)ALT450

Judge : B. Sudershan Reddy, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2-A(2) and 11-A; [Constitution of India](#) - Articles 226 and 227; Uttar Pradesh [Industrial Disputes Act, 1947](#) - Sections 6(2-A)

Appeal No. : WP No. 10804 of 1990

Appellant : Divisional Manager, Apsrtc and Another

Respondent : E. Raja Reddy and Another

Advocate for Def. : Mr. R.N. Reddy, Adv. and Government Pleader for Labour

Advocate for Pet/Ap. : Ms. Jyothi Kiran, SC; Mr. P.V. Sanjay Kumar, Amicus Curiae

Judgement :

ORDER

1. The Andhra Pradesh State Road Transport Corporation in this writ petition challenges the Award passed by Labour Court, Godavarikhani, directing reinstatement of the first respondent herein into service of the Corporation, as

Conductor with continuity of service and with all other attendant benefits, including full back wages. The petitioner prays for issuance of a writ of certiorari to call for the records relating to the Award dated: 28-8-1989 in ID No.271 of 1989 on the file of the Labour Court, Godavarikhani and quash the same.

2. It may be necessary to notice few relevant facts for adjudicating the issues that arise for consideration and as to the validity of the impugned Award. The first respondent herein was served with a charge memo dated 23-9-1986 framing the following four charges against him:

1. For having reissued three tickets of Rs.4.50 ps. Denomination bearing Nos.606 to 608 at Stage No. 13 which were already issued and accounted having sold at the stage No.11 in the S.No.410/52724 dated 27-6-1986, while conducting bus No.AAZ 8380 on route Adilabad-Hyderabad viaUtnoor duly altering the failure 609 to read as 608 and later striking it off by an horizontal line and writing 606 in the side column and also altering the figures of issue from 9 to 8 and later to 6, as if only 6 tickets were sold instead of 9 at stage No.11.

2. For having reissued on ticket of Rs.5/-denomination bearing No. 181 at stage No.9 which was already issued and accounted having sold at Stage No.10 in the SR No.425/26609 dated 3-8-1986 while conducting the bus No.AAZ 7686 on route Khammam-Adilabad, duly altering the figures 182 to read as 181 and later striking it off by an horizontal line and writing 181 in the side column and also altering the figure of issues from 10 to 9, as if only 9 tickets were issued at Stage No. 10.

3. For having reissued one ticket bearing No.461 of Rs.2/- denomination at stage No.11 which was already issued and accounted having sold at stage No. 17 in the SR No.395/39495, dated 9-7-1986, while conducting bus No.AAZ 8380 on route Hyderabad-Adilabad via Nizamabad duly altering the figure 462 to read as 461 from Stage No.17 to Stage No.11 and also altering the figure of issues as 2 from that of 3 at stage No. 17 and by showing the figure 1 in the issues column illegible with over writing against stage No.11.

4. For having reissued one ticket of Rs.1.50 ps. denomination bearing No.727 at stage No.8 which was already issued and accounted having sold at stage No.9 in

the SRNo.52613 dated 24-8-1986 while conducting the bus No.AAZ 7747 on route Hyderabad-Adilabad, via Karimnagar and Armoor duly altering the figure 728 to 727 against stage Nos.9 and 8and altering the figure of issues as 8 from that of 7.

3. The first respondent submitted his explanation dated 7-10-1986 to the charge-sheet saying that his explanation dated 29-9-1986 submitted to the charge memo may be treated as explanation to the charge-sheet dated 30-9-1986. The petitioner having received the explanation ordered for regular disciplinary inquiry into the charges. In the course of inquiry into the charges. In the course of inquiry the Senior Traffic Inspector was examined in proof of the charges levelled against the first respondent and the first respondent himself examined in his defence. On a consideration of the evidence available on record, the Inquiry Officer found the first respondent guilty of all the charges and submitted his inquiry report and proceedings to the disciplinary authority. The disciplinary authority having reached a provisional conclusion that the charges were proved against the first respondent herein directed a show-cause notice requiring the first respondent's explanation in the matter as to' why he should not be removed from the service of the Corporation. The inquiry report and the proceedings were made available to the first respondent along with the show-cause. The first respondent submitted his explanation on 7-3-1987. The disciplinary authority having considered the explanation and the material available on record came to a final conclusion that all the charges framed against the first respondent were proved and accordingly passed an order on 28-3-1987 removing the first respondent from the service of the Corporation. The first respondent preferred an appeal to the Divisional Manager, Adilabad, against the order of removal, which was rejected by an order dated 23-6-1987.

4. The first respondent herein invoked the jurisdiction of the Labour Court by filing an application underSection 2-A(2) of the [Industrial Disputes Act, 1947](#) (for short 'the Act') questioning the order of removal. The first respondent herein filed a Memo before the Labour Court accepting the validity of the domestic inquiry held against him and accordingly prayed to decide the matter under Section 11-A of the Act.

5. The Labour Court having received the record of the disciplinary enquiry, marked the documents forming part of the disciplinary enquiry as Exs.M1 to M26.
6. The Labour Court on an elaborate consideration of the matter and upon appreciation of the evidence and material available on record passed the impugned award directing reinstatement of the petitioner with continuity of service and back wages. It is that award which is challenged in this writ petition on various grounds.
7. Ms. G. Jyothi Kiran, learned Standing Counsel appearing on behalf of the petitioner-Corporation submits that the Labour Court committed serious irregularity in appreciating the evidence and the material available on record and substituted its own findings for that of the disciplinary authority without any justification. It is urged that the impugned award is perverse, as the findings of the Labour Court are based on surmises and conjectures. The material available on record would not support the conclusions reached by the Labour Court and, therefore, the findings are based on no evidence.
8. The learned Standing Counsel also contends that reappreciation of the evidence by the Labour Court is not permissible in cases where the delinquent workman admits as to the validity of the domestic enquiry. It is also urged by the learned Standing Counsel that it is not open for the Labour Court to completely substitute its own view with regard to quantum of punishment in purported exercise of its power under Section 11-A of the Act. It is alternatively contended that in this case exercise of the power by the Labour Court under Section 11-A of the Act is not in accordance with law and well established principles in the matter of exercise of jurisdiction under Section 11-A of the Act.
9. Sri R.N. Reddy, learned Counsel appearing on behalf of the first respondent-workman submits that the Labour Court is clothed with the power and jurisdiction to reappreciate the evidence available on record and satisfy itself whether the said evidence relied on by the employer establishes the misconduct alleged against the employee, even in cases where the domestic enquiry was valid and proper. It is further urged that the Labour Court, under Section 11-A of the Act, has the jurisdiction and power to substitute its own opinion with regard to the measure of

punishment in the place of the disciplinary authority, once it is satisfied that the order of discharge or dismissal was not justified. In nut shell, it is submitted that the Labour Court can always go into the proportionality of the punishment.

10. Sri P.V. Sanjay Kumar, learned amicus curiae submits that the conspectus of the history of Section 11-A of the Act and the judicial precedents founded thereon make it clear that the provisions of Section 11-A of the Act make a conscious dent in the managerial prerogative of dealing with the workmen in disciplinary proceedings leading to their discharge or dismissal and within the frame work of parameters of Section 11-A. The Labour Court/Tribunal and thereafter the High Court, in it's supervisory jurisdiction, would have plenary power of appraising the evidence and independently applying their mind to the facts and circumstances which ostensibly weighed with the management in imposing the harshest punishment upon the workman.

11. It may be necessary to notice that Section 11-A of the Act has been inserted into the Act by way of amendment Act vide Act 45 of 1971, with effect from 15-12-1971. The Supreme Court in *Indian Iron and Steel Co. Ltd. v. the Workman*, AIR 1958 SC 130, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed 'that in cases of dismissal for misconduct, the Tribunal has to act as a Court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair Labour practice; or when the management had been guilty of a basic error or violation of principles of natural justice; or when on the materials, the findings was completely baseless or perverse.'

12. The very purpose of introducing Section 11-A into the Act by the Amendment Act 45 of 1971 is to remove the limitations imposed upon the jurisdiction of the Labour Court/Tribunal by the Supreme Court. The Statement of objects and reasons of the Act 45 of 1971 says so in many words after referring to the decision in the case of *Indian Iron and Steel Company* (supra). The statement of objects and reasons also refer to the recommendations made by the International Labour Organisation that a worker aggrieved by the termination of his employment should

be entitled to appeal against the termination, among others, to a neutral body such as an arbitrator, a Court, an arbitration committee or a similar body and that neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. In accordance with these recommendations, it was considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any as it thinks fit or give such other relief to the workman, including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. It was for achieving the aforementioned purposes Section 11-A was inserted in the Act.

13. From the statements and objects, it is clear that Section 11-A of the Act was inserted into the Act to confer power on the Adjudicators to reappreciate the evidence adduced in the domestic inquiry to grant proper relief to the workman, the power which the Tribunal could not have exercised, earlier, according to the judgment of the Supreme Court in Indian Iron and Steel case (supra).

14. The interpretation of provisions of Section 11-A fell for consideration before the Supreme Court in Workman of Firestone Tyre & Rubber Company of India P. Ltd v. Management, : (1973)ILLJ278SC . The Supreme Court in the Firestone case (supra), itself relied upon the statement of objects and reasons and observed that 'it cannot be taken into account for the purpose of interpreting the plain words in the section. But, at the same time, it gives an indication as to what the legislature wanted to achieve.' The Supreme Court held that 'the Act is a beneficial piece of Legislation enacted in the interest of employees and in construing the provisions of a welfare Legislation the Courts should adopt what is equally a beneficent rule of construction.'

15. The Supreme Court further held that 'the Tribunal is now clothed with the power to reappreciate the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by the employer established the misconduct

alleged against the workman. What was originally plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct..... The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter.'

16. It is further held that the Tribunal may come to its own conclusion that the order of discharge or dismissal is not justified because the misconduct itself is not established by the evidence. The Tribunal may also hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. To come to a conclusion either way, the Tribunal will have to reappreciate the evidence for itself. Now the jurisdiction of the Tribunal to reappreciate the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic inquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence before it for the first time.

17. In the very same judgment, the Apex Court further held that under Section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the misconduct is not justified. The Tribunal may also hold that the proved misconduct does not merit punishment by way of dismissal or discharge. The Tribunal accordingly may reduce and award to the workman only lesser punishment instead of discharge or dismissal. The Tribunal is undoubtedly conferred with the power to interfere with the punishment and alter the same in exercise of its jurisdiction under Section 11-A of the Act.

18. In *Ramakant Misra v. State of Uttar Pradesh*, : (1982) 11 LLJ 472 SC, it is held by the Apex Court that the Labour Court has the jurisdiction and power to substitute

its measure of punishment in the place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. The Labour Court is clothed with the jurisdiction to scrutinise as to whether the penalty imposed for misconduct is commensurate with the gravity of the offence charged.

19. In *Rajinder Kumar Kindra v. Delhi Administration*, : (1984) IILLJ517SC , it is observed by the Supreme Court that since the introduction of Section 11-A of the Industrial Disputes Act, the Industrial Tribunal is now equipped with the powers to reappreciate the evidence in the domestic inquiry and satisfy, itself, whether the said evidence relied upon by the employer establishes the misconduct alleged against the workman.

20. The Supreme Court in *Scooter India Ltd. v. Labour Court, Lucknow*, : (1989) ILLJ71SC while interpreting Section 6(2-A) of the U.P. [Industrial Disputes Act, 1947](#) (for short 'U.P. Act') which is analogous to Section 11-A of the Act, observed that the Labour Court even after finding the inquiry to be fair and lawful and findings not to be vitiated in any manner, still may interfere with the order of termination of service passed against the workman in exercise of its power under Section 6(2-A) of the U.P. Act.

21. A Division Bench of this Court in *APSRTC v. Labour Court, Gmtur*, 1978 (1) APLJ 182, while interpreting Section 11-A of the Act observed that 'the Labour Court/ Tribunal is vested with all the powers which are normally exercised by the appellate authority by way of reappraising the evidence and setting aside the findings and also imposing reasonable punishment. The Labour Court/Tribunal, have the power to come an independent conclusion on the evidence recorded during the domestic inquiry. They can also find that the evidence justifies the finding of misconduct arrived at by the domestic authorities and still hold that the order of discharge or dismissal is not justified under the circumstances of a particular case and award lesser punishment in lieu of discharge or dismissal.

Similar is the view expressed by another Division Bench of this Court in *C. K Ramulu v. Labour Court*, 1984 (2) APLJ 98. It is further held by the Division Bench that the Tribunal is under duty to consider whether the punishment imposed is

proportionate to the proved misconduct.

22. In *Kamalamma v. Management of Nursing Industries*, : (1996)IILLJ175AP , another Division Bench of this Court speaking through the learned Chief Justice observed that:

'The rule as is ordinarily applied in cases of imposition of punishment in exercise of statutory power by a statutory authority is that the Court does not prefer to enter into the sufficiency or otherwise of the punishment and whether the punishment imposed is reasonable or not, unless the punishment awarded is shockingly inappropriate and so arbitrary that no reasonable person can support the same. The same view, however, is relaxed in the case of an award under Section 11-A of the Industrial Disputes Act.'

23. In the case of *D.U.V.N.V. Raju v. Depot Manager, APSRTC*, 1996 (3) ALD 542 = 1996 (2) An WR43, a learned single Judge of this Court observed that:

'Under Section 11-A of the Industrial Disputes Act, the Labour Court is empowered to reappraise the evidence and function, itself, as an appellate authority over the orders passed by the Management in respect of the dismissal or terminations. If the Labour Court fails to exercise the power properly or if it exercises in excess of the power laid under Section 11-A, it is open for the High Court under Article 226 to interfere and grant appropriate relief.'

24. From the above decisions the following principles broadly emerge:

(a) The Labour Court/Industrial Tribunal after introduction of Section 11-A of the [Industrial Disputes Act, 1947](#), is clothed with necessary power, and jurisdiction to reappraise the material available on record and substitute its own findings for that of the disciplinary authority. The power exercised by the Labour Court/ Industrial Tribunal is akin to that of an appellate Court.

(b) The Labour Court/Industrial Tribunal is duty bound to reappraise the evidence even in cases where the workman files a memo conceding as to the validity of the domestic inquiry.

(c) The Labour Court/Tribunal even after holding that the domestic inquiry was held in accordance with the principles of natural justice may, yet, interfere with the findings and substitute its own findings; on the basis of the very same evidence it can reach its own conclusion by recording its own findings and may reverse the findings arrived at by the disciplinary authority and hold that the charges are not established.

(d) The Labour Court/Tribunal can also find that the evidence and material available on record justifies the findings of misconduct arrived at by the disciplinary authority and still hold that the order of discharge or dismissal is not justified under the circumstances of a particular case and accordingly only lesser punishment.

25. In fact the Labour Court/Tribunal is duty bound to examine the question as to what would be the appropriate punishment in every case including in cases where it concurs with the findings arrived at by the disciplinary authority.

26. But the question that arises for consideration is under what circumstances, the Labour Court/Tribunal can set aside an order of dismissal or discharge and direct reinstatement of a workman or award lesser punishment. There is no difficulty whatsoever in cases where the Labour Court/Tribunal comes to the conclusion that the charges levelled against the workman are not established; but, the difficulty would arise where the Labour Court/Tribunal also reaches the same conclusion as that of the disciplinary authority about the establishment of the charges resulting in serious misconduct.

27. The expression used in Section 11-A of the Act that 'the Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge was not justified.....' is significant. The Labour Court/Tribunal can interfere with the order of discharge or dismissal only when it is satisfied that such order of discharge or dismissal was not justified. Such satisfaction by the Labour Court/Tribunal would squarely depend upon appreciation of the material available on record. Mere feeling or misplaced sympathies are no ground for interference with the order of discharge or dismissal. Mere inclination to grant relief for some unknown reason cannot be countenanced. Such an unlimited power is not conferred upon the Labour Court/Tribunal. The power which is discretionary in nature conferred upon

by the Tribunal by Section 11-A to interfere with the order of punishment may have to be exercised in a judicial and judicious manner and not in an arbitrary manner. The Tribunal is duty bound to take into consideration all the relevant facts and factors and only then can interfere with the punishment awarded by the Management when it comes to the conclusion that the punishment imposed is extremely harsh and unjust and wholly disproportionate to the misconduct proved. Even that punishment imposed by the Tribunal in substitution of the punishment awarded by the disciplinary authority should not amount to completely absolving the employee of the misconduct or make the punishment mere illusory one and allow the employees to go scot-free particularly when the charges are grave in nature resulting in loss and misappropriation of funds. Reinstatement of an employee even after the proved misconduct, which is grave and serious in nature is fraught with serious consequences which may ultimately vitiate the industrial growth, peace and development. The Labour Court/Tribunal must act in good faith and must have regard to all the relevant considerations. The Labour Court/Tribunal should not act arbitrarily and capriciously. The expression 'satisfaction of the Tribunal' is subjective satisfaction; but to be reached objectively and upon reassessment of material on record. The Labour Court/Tribunal is bound to record specific findings in all cases where it proposes to interfere with the quantum of punishment. The reasons as to why it proposes to interfere may have to be necessarily recorded.

Judicial Review of the orders Passed by the Labour Court/Industrial Tribunals.

The Labour Court/Industrial Tribunals are inferior Tribunals and their decisions/awards are amenable to correction by this Court in exercise of its jurisdiction under 226 of the [Constitution of India](#). This Court in exercise of its judicial review can always consider the legality and propriety of the decisions/awards rendered by the Labour Court/ Tribunals. This Court is entitled to evaluate and review the decision making process. This Court is conferred with wide jurisdiction to interfere with the award, if such an award is based on complete misconception of law or it is based on no evidence or that no reasonable man would come to the conclusion to which the Labour Court has arrived. But, in that process reappraisal of evidence is not permissible. This Court does not exercise

any appellate jurisdiction over the Labour Court/Industrial Tribunal. Section 11-A of the Act may confer jurisdiction upon the Labour Court/Tribunal to reappraise the evidence and material available on record and the power exercised by the Labour Court/Tribunal to reappraise the evidence and material available on record and the power exercised by the Labour Court/Tribunal may be similar to that of appellate Court. But, there is no appeal provided against the award passed by the Labour Court/Tribunal under Section 11-A of the Act to this Court. The Act does not provide any appeal as such against the Award. Obviously, Section 11-A of the Act neither confers any additional power upon this Court nor takes away or abridges the power of this Court to issue appropriate writs in exercise of jurisdiction under Article 226 of the [Constitution of India](#). It is well settled that statutory provisions cannot in any manner whatsoever impinge upon the jurisdiction of this Court under Article 226 of the [Constitution of India](#). The High Court's power to issue writs is traceable to Constitutional provisions.

28. In *Sadhu Ram v. Delhi Transport Corporation*, : (1983)11LLJ383SC the Supreme Court observed that:

'wide jurisdiction conferred under Article 226 has to be exercised with great circumspection. The High Court cannot constitute itself into an appellate Court over Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings of jurisdictional facts which the Tribunal is well competent to decide.'

29. Very often reliance is placed upon the observations made by the Supreme Court in *Gujarat Steel Tubes Ltd v. Gujarat Steel Tubes Mazdoor Sabha*, : (1980)11LLJ137SC in support of the contention that even the High Court under Article 226 of the [Constitution of India](#) can reappraise the evidence and material available on record in the same manner as that of the Labour Court/Tribunal in exercise of its power under Section 11-A of the Act. But, in my considered opinion, the observation made in *Gujarat Steels* (supra) that: 'What the Tribunal may, in its discretion, do, the High Court too, under Article 226, can, if facts compel, do.' is required to be understood in the context of the principle and the ratio laid down by the Apex Court in the very same judgment.

30. The Supreme Court in the very same judgment observed:

'broadly stated, the principle of law is that the jurisdiction of the High Court under Article 226 of the Constitution is limited to holding the judicial or quasi-judicial Tribunals or administrative bodies exercising the quasi-judicial powers within the leading strings of legality and to see that they do not exceed their statutory jurisdiction and correctly administer the law laid down by the State under which they act. So long as the hierarchy of officers and appellate authorities created by the statute function within their ambit the manner in which they do so can be no ground for interference..... It is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.'

31. The Supreme Court in fact in Gujarat Steels Tubes (supra), approvingly referred to the decision of the Gujarat High Court in Navinchandra v. Manager, Ahmedabad Co-op. Department Stores Ltd., 1978 (19) Guj.LR 108, in which the Gujarat High Court held:

'that the amended Article 226 would enable the High Court to interfere with an Award of the Industrial adjudicator if that is based on a complete misconception of law or it is based on no evidence or that no reasonable man would come to which the arbitrator has arrived.'

Therefore, the decision in Gujarat Steel Tubes Ltd. (supra), doesn't support the contention that this Court can reappreciate or reappraise the evidence available on record and exercise any appellate jurisdiction over the Labour Courts insofar as the findings of the facts are concerned.

32. This decision is further clarified by the Judgment in Jitender Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd., : (1984)ILLJ10SC (in which one of the Judges, D.A. Deasi, J.) was a Member in Gujarat Steel Tubes case (supra). It is observed that:

'under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court

under Article 226 of the Constitution does not enjoy any such power though as a superior Court, it is vested with the right of superintendence.

It is entitled to scrutinise the orders of the subordinate Tribunals within the well accepted limitations, and, therefore, it cannot be an appropriate case to quash the award of the Tribunal and therefore upon remit the matter to it for fresh disposal in accordance with law and directions, if any. But, it is not entitled to exercise the powers of the Tribunal and substitute an award in the place of one made by the Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it.

33. Therefore, this Court while exercising its power of judicial review, may issue a writ of certiorari to correct the errors of jurisdiction when the inferior Court or Tribunal act without jurisdiction or in excess or fails to exercise it. The writ of certiorari can also be issued if there is an error of law, which is apparent on the face of the record. Of course, this Court also would interfere if the findings are based on suspicion, conjectures or surmises or no reason is present in the facts and circumstances of the case. Such a finding may be characterised to be perverse and based on no evidence and such a findings are required to be corrected by issuing a writ of certiorari. This Court, however, acting in certiorari jurisdiction does not act as an appellate Court.

34. This Court while considering the validity of an Award passed by the Labour Court/Tribunal Under Section 11-A of the Act, in exercise of its jurisdiction under Article 226 of the [Constitution of India](#), does not exercise any appellate jurisdiction. It is not an appeal under Section 11-A of the Act to this Court. No doubt the Labour Court exercises the power under Section 11-A of the Act like that of an appellate Court and accordingly evaluate the decision of the disciplinary authority.

35. The power to issue appropriate writs in the nature of writ of mandamus, Certiorari, Prohibition and Quo-warranto is conferred upon this Court by the Constitution. The provisions contained in ordinary enactments can neither expand nor limit the jurisdiction of this Court under Article 226 of the [Constitution of India](#) to issue appropriate writs. Therefore, the provisions in Section 11-A of the Act shall have no bearing whatsoever in relation to parameters of judicial review

by this Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#). In fact, it is not the question of jurisdiction, as admittedly, the jurisdiction of this Court is very wide; but, the question is exercise of its jurisdiction. The jurisdiction may have to be exercised in accordance with the well known principles and self imposed restrictions upon the exercise of that jurisdiction. At any rate, the distinction between the appellate power and the judicial review jurisdiction has to be borne in mind, they being guiding principles for exercising the jurisdiction under Article 226 of the [Constitution of India](#).

Proportionality of the Punishment

It is already observed that the Labour Court/Tribunal does not enjoy any untrammelled power or jurisdiction to set aside the order of discharge or dismissal and direct reinstatement of the workman and award lesser punishment in lieu of discharge or dismissal. Such an award may be passed by the Labour Court/Tribunal only in case where it is satisfied that the order of discharge or dismissal was not justified. Such satisfaction would depend upon the appraisal of material and evidence on record. In that process the Labour Court/Tribunal is bound to record that the order of discharge or dismissal is shockingly disproportionate to the established misconduct. Such conclusion can be arrived at by the Labour Court/Tribunal only after appraisal of the material on record. Such jurisdiction and power to interfere with the order of the disciplinary authority is conferred upon the Labour Court/Tribunal to protect the workmen from the possible vindictive and arbitrary dismissal or discharge of workmen from the service on flimsy, trivial and imaginary grounds. But the satisfaction of the Labour Court/Tribunal that the order of discharge or dismissal was not justified is challengeable on the ground that it was found on no evidence and also on the ground that no reasonable person would have arrived at such satisfaction on the basis of the material available on record. Therefore, the power under Section 11-A of the Act has to be exercised by the Labour Court/ Tribunal strictly on the basis of the material on record. The wide discretion conferred upon the Labour Court/Tribunal is well structured by the provisions of Section 11-A of the Act, itself. Discretion means that something is to be done in accordance with the Rules of reason and justice, not according to the private opinion..... according to law and not

humor. It is to be not arbitrary, vague and fanciful, but legal and regular. It may be exercised within the limits *Sharp v. Wakefield*, 1891 ac 173.

36. This Court in exercise of its judicial review jurisdiction may not normally interfere with the discretion exercised by the Labour Court/Tribunal in awarding appropriate punishment, if such Award does not suffer from any legal infirmities. The same para meters referred to herein above would apply in judicially reviewing the award passed by the Labour Court/Tribunal even in the matter of awarding appropriate punishment in exercise of its jurisdiction under Section 11-A of the Act. This Court in appropriate cases may interfere with the Award passed by the Labour Court/Tribunal when it substitutes the punishment and awards a lesser punishment than the one awarded by the disciplinary authority in an arbitrary and fanciful manner. Of course, this Court may interfere if the discretion is not properly exercised by the Labour Court/ Tribunal. Likewise this Court can also interfere with the Award of the Labour Court/Tribunal when it fails to exercise its jurisdiction under Section 11-A of the Act to consider the desirability of awarding of lesser punishment in lieu of discharge or dismissal. But the awarding of appropriate punishment if depends upon appraisal of material available on record, the only course left open for this Court is to remit the matter for fresh consideration by the Labour Court.

37. However, a Full Bench of this court in *G.R. Reddy v. Presiding Officer, Labour Court*, : 1998(1)ALD616 (FB), by placing reliance upon the judgments in *State of Orissa v. Sbidyagushan*, : (1963)ILLJ239SC and *State Bank of India v. Samarendra Krishore*, : (1994)ILLJ872SC observed that:

'From a conspectus of decided cases, the golden thread which is noticed throughout, is that this 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 proved guilt or on misconduct no reasonable prudent man would award such a punishment which is so arbitrary and unreasonable attracting application of Article 14 and in such circumstances, 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](#). Even here, this Court while exercising the power of judicial review may not substitute the punishment which is reasonable according to its opinion, for the punishment awarded by the disciplinary authority. It should always be left to the disciplinary authority to impose appropriate punishment in the circumstances of the case. Such power may be exercised by a Court of appeal and not by the High Court while exercising jurisdiction under Article 226 of the [Constitution of India](#).

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.'

38. It may be required to notice that the validity of the awards passed by the Industrial Tribunal confirming the orders of removal passed by the disciplinary authority were the subject matter of consideration before the Full Bench. The Full Bench unfortunately failed to notice even the provisions of Section 11-A of the Act which undoubtedly confers jurisdiction upon the Labour Court/Tribunal to consider the validity of an order of dismissal or discharge and award such appropriate punishment as it may consider necessary in case if it is satisfied that the order of dismissal or discharge is not justified. A very wide power is conferred upon the Labour Court/ Tribunal under Section 11-A of the Act, as observed by the Supreme Court in *FiresTone* case (supra). Obviously, the said judgment was not placed before the Full Bench. In *Fire Stone* case (supra), the Apex Court held:

'Another change that has been effected by Section 11-A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under Section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11-A'

39. Similar is the view taken by the Apex Court in Gujarat Steel (supra); Ramakant Mishra (supra) and Scooters India Ltd (supra). Unfortunately, without noticing the binding precedents, it was held by the Full Bench in O.K. Reddy case (supra) 'that it should always be left to the disciplinary authority to impose appropriate punishment in the facts and circumstances of the case.'

40. The Full Bench relied upon the judgment of the Supreme Court in the cases of State of Orissa (supra) and State Bank of India (supra), in which the Supreme Court held that imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it, but not the High Court or the Administrative Tribunal, as the case may be, as the power under Article 226 is one of judicial review and it is not an appeal from a decision, but a review of the manner in which the decision was made. But in cases where the punishment is awarded by the management to a workman covered by the provisions of the Act, the Labour Court/ Tribunal is conferred with the jurisdiction under Section 11-A of the Act to go into the validity of such orders and also award lesser punishment in appropriate cases. The power is akin to that of an appellate authority. This aspect of matter has escaped the attention of the Full Bench in G.R. Reddy's case (supra). The Full Bench, in fact,

has not gone into the nature and scope of the inquiry in the proceedings under Section 11-A of the Act before the Labour Court/ Tribunal. The Full Bench never considered the amplitude and the extent of power conferred upon the Labour Court by the provisions of Section 11-A. The Full Bench decision has no application whatsoever to the cases arising under Section 11-A of the Act. The ratio of the Full Bench judgment in no manner effects the jurisdiction of the Labour Court/Tribunal conferred upon it under Section 11-A of the Act. The judgment of the Full Bench in G.R, Reddy's case (supra) is the authority for the proposition that this Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#) does not act as a Court of appeal. It is held by the Full Bench that this Court in exercise of its judicial review jurisdiction may not ordinarily interfere with the quantum of punishment awarded by the disciplinary authority. The observation that the disciplinary authority is clothed with the exclusive jurisdiction to award punishment is required to be understood as applicable to cases where the provisions of Section 11-A of the Act are not applicable.

After a Rain _of Rulings and Storm of submissions, a word about Relief

We have already noticed the charges levelled against the first respondent herein. The Labour Court after referring to the entire material on record held that none of the charges framed against the first respondent were proved. The Labour Court recorded its findings in respect of each of the charges. The Labour Court in categorical terms held that charge No. 1 is not proved for the reasons stated in the award. So far as charge No.2 is concerned, the Labour Court in categorical terms held that the charge is unacceptable on the face of it. The other charges were also held not proved. The Labour Court observed that on the basis of some corrections in one or two entries in the Statistical Return (SR) it is not possible to presume that the first respondent reissued the tickets. The findings are based on appraisal of the material on record. The Labour Court having considered the evidence and the documents produced by the parties during the course of domestic inquiry disagreed with the findings of the disciplinary authority. Re-appreciation of the evidence by the Labour Court in exercise of its jurisdiction under Section 11-A is not only permissible; but it is mandatory duty of the Labour Court/Tribunal to go into the merits of the case by re-appreciating the material on record.

41. The first respondent-workman filed a Memo before the Labour Court, at the threshold stage expressing his no objection for the validity of the domestic enquiry and accordingly requested the Labour Court to proceed to decide the matter under Section 11-A of the Act. There was no request whatsoever by the petitioner to lead any further evidence in support of its order removing the first respondent from service. The Labour Court therefore, proceeded to consider the material on record and arrived at its own conclusions. The order does not suffer from any infirmity whatsoever requiring any interference by this Court. The Labour Court is entitled to re-appreciate the evidence and substitute its own finding for that of the disciplinary authority. Such a re-appreciation of the evidence and the material on record is permissible even in cases where the Labour Court is required to consider the matter in exercise of its power under Section 11-A of the Act. The Labour Court is entitled to go into the whole question afresh even in cases where there is an admission as to the validity of the domestic enquiry. The domestic inquiry may have been held in accordance with the principles of natural justice, but that does not mean that the workman cannot raise any dispute with regard to the findings arrived at by the disciplinary authority.

42. The issue raised for consideration in the instant writ petition is not *res Integra*, but conclusively decided by an authoritative pronouncement of the Supreme Court in *Fire Stone* case (*supra*), which is as under:

'Therefore, it will be seen that, both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.'

43. This is the complete answer for the submissions made by the Learned Standing Counsel appearing for the petitioner-APSRTC.

44. I do not find any merit in the writ petition and the same shall accordingly stand dismissed. There shall be no order as to costs.

45. The Court appreciates and acknowledges the valuable assistance rendered by Sri P.V. Sanjay Kumar, amicus curiae, who readily agreed to assist the Court, at its request.

46. The Court also acknowledges the valuable assistance rendered by the learned Counsel, Sri A.K. Jaya Prakash Rao and Sri G. Vidyasagar.

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