2012 Vol. 114 (6) Bom. L.R. 3386*

IN THE HIGH COURT OF BOMBAY

Holy Spirit Hospital and Anr.
v.
Benjamin Fernandes
AND
Benjamin Fernandes
v.
Holy Spirit Hospital

WRIT PETITION NO. 1646 OF 2011 AND WRIT PETITION NO. 2225 OF 2011
DECIDED ON: 07.09.2012

Judge:

A.A. Sayed, J.

Counsel:

For Appellant/Petitioner/Plaintiff: S.C. Naidu i/by C.R. Naidu & Co. in Writ Petition No. 1646 of 2011 and M.D. Naglein Writ Petition No. 2225 of 2011

For Respondents/Defendant: M.D. Nagle in Writ Petition No. 1646 of 2011 and S.C. Naidu i/by C.R. Naidu & Co. in Writ Petition No. 2225 of 2011

Cases referred:

Breach Candy Hospital and Research Centre v. *B.B. Pardeshi and Anr.*, MANU/MH/0066/2002: [2001 (91) FLR 1185]: 2002 (2) MhLJ 227 (mentioned) [para 14]

Cadbury India Ltd. v. *V.B. Save & Ors.* MANU/MH/0240/1996:1996 I CLR 846: 1996 (73) FLR 1262 (discussed) [para 16]

Chandrakant k. Patil v. *Union of India & Ors.* MANU/MH/0259/1995: 1995 II CLR 445 (discussed) [para 14]

Hombe Gowda Edn. Trust and Anr. v. *State of Karnataka and Ors.* MANU/SC/2522/2005: 2006 (108) FLR 584: 2006 (2) ALT 3 (SC): [2006 (2) JCR 24 (SC)]: JT 2005 (10) SC 598: (2006) I LLJ 1004 SC: 2006-2-LW (Crl) 481: RLW 2006 (1) SC 632: (2006) 1 SCC 430: 2006 (2) SLJ 272 (SC) (discussed) [para 14]

Janata Bazar (South Kanara Central Co-operative Wholesale Stores Ltd,). Etc. v. *Secretary, Sahakari Noukarara Sangh, etc.* MANU/SC/0591/2000: AIR 2000 SC 3129: [2000 (87) FLR 483]: JT 2000 (10) SC 589: (2000) II LLJ 1395 SC: 2000 (6) SCALE 446: (2000) 7 SCC 517: (2000) SCC (L&S) 958: [2000] Supp 3 SCR 367 (discussed) [para 14]

* MANU/MH/1468/2012

Mahindra and Mahindra Ltd. v. *N.B. Naravde, etc.* MANU/SC/0138/2005: AIR 2005 SC 1993: 2005 (2) ALT 29 (SC): (2005) 2 CALLT 121 (SC): 117 (2005) DLT 697 (SC): [2005 (104) FLR 1218]: [2005 (2) JCR 4 (SC)]: JT 2005 (2) SC 583: 2005 (2) KLT 32 (SC): (2005) I LLJ 1129 SC: (2005) 3 SCC 134: (2005) SCC (L&S) 361: 2006 (1) SLJ 204 (SC): 2005 (2) UJ 792: (2005) 2 UPLBEC 1641 (discussed) [para 14]

Mysore Paper Mills Limited, Bhadravathi v. *G. Shekar alias Gyana Shekharan*, 2002 II CLR 160 (discussed) [para 16]

Palghat BPL & PSP Thozhilali Union v. *BPL India Ltd. and Anr.*, 1996 I CLR 368 (discussed) [para 16]

Regional Manager R.S.R.T.C. v. *Ghanshyam Sharma*, 2002 I CLR 150 (discussed) [para 16]

Sengara Singh v. *State of Punjab* MANU/SC/0342/1983: (1983) 4 SCC 225: 1983LabIC1670: (1984) I LLJ 161 SC: 1983 (2) SCALE 713 (discussed) [para 16]

State Bank of Mysore and Ors. etc. v. *M.C. Krishnappa*, MANU/SC/0743/2011: 2011 (130) FLR 1082: [2011 (3) JCR 265 (SC)]: JT 2011 (7) SC 91: 2012 (1) KarLJ237: 2011 (3) KLT (SN) 84: (2011) III LLJ 609 SC: 2011LLR857: 2011 (4) PLJR58: 2011 (7) SCALE 337: (2011) 7 SCC 325: (2011) 2 SCC (L&S) 254: [2011] 7 SCR 188 (discussed) [para 14]

U.P. State Road Transport Corporation v. *Subhash Chandra Sharma and Ors.* MANU/SC/0188/2000: AIR 2000 SC 1163: [2000 (85) FLR 284]: JT 2000 (3) SC 184: (2000) I LLJ 1117 SC: (2000) II MLJ 84 (SC): 2000 (2) SCALE 371: (2000) 3 SCC 324: (2000) SCC (L&S) 349: [2000] 2 SCR 451: 2000 (1) UJ 724: (2000) 2 UPLBEC 1199 (discussed) [para 14]

ISSUES AND FINDING

Labour and Industrial — Misconduct — Assaulting Superior Officer — Punishment of dismissal from Service — Impugned award altered the punishment by way of withholding two increments permanently and directed reinstatement of the workman with continuity of service — Plea of the workman for back wages was rejected — Hence, the cross Petitions — Whether the punishment of dismissal awarded by the management to the workman was shockingly disproportionate to the charges of proved misconduct?

Held, as clear from the nature of misconduct, it certainly could not be said that no reasonable person could inflict the punishment of dismissal nor can it be said that the dismissal order was so disproportionate as to shock the conscience of the Court. The fact that the workman was serving in the hospital for several years and his past record was not adverse was not an extenuating circumstance warranting interference with the punishment of dismissal awarded by the management considering the gross facts of the case. Discipline and congenial atmosphere is required to be maintained in any institution. To show leniency in a case such as the present one and to allow the workman to be reinstated would send a wrong signal to the other employees that one can get away lightly even with gross misconduct of assault on his superior. Even assuming for a moment that it was permissible to take a lenient view of the matter, it is of significance to note that at no point of time the workman has shown any remorse or afforded any apology either to the victim or to the Hospital and his stand has all along been that of denial simplicitor. Accordingly the Petition filed by the Hospital was allowed and that of the workman was dismissed.

Labour and Industrial — Powers of Labour Court — Exercise thereof under Section 11A of the Industrial Disputes Act, 1947

Held, it is by now trite that under Section 11A of the Industrial Disputes Act, 1947 the power exercised by the Labour Court particularly when the Award Part I as in the instant case is held against the workman is only to see if the punishment was shockingly disproportionate to the proved misconduct. Pertinently, in the Statement of Claim the case of the workman was that of denial simplicitor. The finding of the Labour Court that there was sudden and grave provocation by the supervisor was merely an *ipse dixit* of the Labour Court *dehors* the pleading and evidence of the workman when the case of the workmen was of denial. A case of sudden and grave provocation can arise only when there was an admission of guilt. In the circumstances, the finding of the Labour Court was clearly perverse particularly when the Labour Court itself holds in the impugned Award that "no doubt the proved misconduct against the second party is serious and grave." It was held that the Labour Court seemed to be overawed by the fact that the workman was serving the Hospital for about 16 years and had a clean and unblemished record and the Labour Court has as a matter of sympathy altered the punishment by directing reinstatement and two increments of the workman came to be withheld permanently instead of the punishment of dismissal by the management which was impermissible more particularly in the gross facts and circumstances of the present case. In the circumstances, looking to the gravity of the misconduct, the Labour Court ought not to have interfered with the punishment of dismissal awarded by the management and shown leniency and taken a sympathetic view more so, when the workman has not shown any remorse or afforded any apology for his grave acts of assault on a lady supervisor at work which required medical treatment and to the contrary taken a stand of denial simplicitor.

Ratio Decidendi:

"The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate."

JUDGMENT

A.A. Sayed, J.

1. Rule in Writ Petition No. 2225 of 2011. Learned Counsel waives service on behalf of Respondent. Since Rule is already issued in Writ Petition No. 1646 of 2011, on the request of the learned Counsel, both the Petitions are heard finally. These two cross Petitions impugn an award dated 10th May, 2011 passed by the Labour Court in Reference (IDA) No. 107 of 2008. Writ Petition No. 1646 of 2011 is filed by the Petitioner-Hospital (hereinafter referred to as "the Hospital") aggrieved by that part of the impugned award whereby the punishment awarded by the management was altered and instead of dismissal from service, two increments of the workman were ordered to be withheld permanently and the workman was directed to be reinstated with continuity of service. Writ Petition No. 2225 of 2011 is filed by the Petitioner-workman (hereinafter referred to as "the workman") aggrieved to the extent of denial of back wages and the withholding of two increments permanently.

2. The Hospital is established and managed by "The Society of the Servants of the Holy Spirit" which is registered under the Bombay Public Trust Act, 1950. The

Hospital is a modern hospital offering medical services in various specialties including super specialties and offers subsidised rates to poor persons. The Hospital staff strength is about 800 employees including doctors and managerial staff.

3. The workman was working as a helper and was attached to Laundry Department of the Hospital since 1991. According to the Hospital, the workman committed grave acts of misconduct for which he was issued chargesheet dated 19th March, 2005. The said chargesheet was replied to by the workman by his reply dated 22nd March, 2005. The reply was not found satisfactory and the Hospital decided to hold a domestic enquiry against the workman by an independent Enquiry officer. The Enquiry Officer submitted his Report and findings dated 19th January, 2007. The workman replied to the said Report and findings by his letter dated 5th February, 2007. The Enquiry Officer held the workman guilty of the charges levelled against him. On the basis of the Enquiry Report, the management by its order dated 13th February, 2007 awarded punishment of dismissal from service to the workman and further directed his gratuity to be forfeited.

4. The workman thereafter raised a dispute *vide* his letter dated 3rd April, 2007 and submitted his Justification Statement dated 18th June, 2007 to the Office of the Commissioner of Labour, Mumbai. The Hospital replied to the same. The Conciliation Officer, after hearing both the sides, opined that the dispute could not be resolved and proceeded to report failure of conciliation under Section 12(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act") vide his Report dated 2nd February, 2008. The Deputy Commissioner of Labour (Conciliation) on consideration of the Report made a Reference under Section 10(1)(c) read with Section 12(5) of the I.D. Act to the Labour Court by an order of Reference dated 3rd April, 2008. The workman thereafter filed his Statement of Claim dated 23rd July, 2008 in support of his demand for reinstatement with full back wages and continuity of service. The Hospital filed its Written Statement dated 9th July, 2009.

5. Two preliminary issues were raised:

(a) Whether the enquiry was fair, proper and legal? and

(b) Whether the findings recorded by the Enquiry Officer are not perverse?

6. After the evidence was recorded on the preliminary issues and after hearing the parties, the Labour Court passed Award Part I dated 22nd June, 2010 and concluded that the enquiry was fair and proper and the findings were not perverse.

7. The said Award Part I was not challenged by the workman. In respect of the issue of proportionality of punishment, evidence was adduced. The Hospital examined Sr. Reena, Director - HRD and Mrs. Anita Rodrigues, Supervisor, Head of Laundry Department as witnesses. The workman adduced evidence by examining himself and his colleagues Mr. Felix Rodrigues and Mr. Prakash Bhoir.

8. The Labour Court passed the impugned Award Part II on 10th May, 2011 and held that the punishment awarded to the workman was disproportionate to the charges of misconduct and directed reinstatement with continuity of service. The Labour Court ordered withholding of two increments permanently. The prayer of the workman for back wages was rejected. Hence, the above cross Petitions.

9. The misconduct alleged by the Hospital was on the following lines- that on 16th March, 2005 the workman was working in the morning shift in the Laundry

Department. Around 2.30 p.m. the Supervisor, Mrs. Anita Rodrigues heard Ms. Johana and Mr. Felix having a loud altercation/dispute due to which the whole working of the department was disturbed. Mrs. Anita Rodrigues went upto them and enquired from Mr. Felix as to the cause of the altercation and as to why he was shouting so loudly. It is alleged that the workman unwarrantedly and unsolicitedly intervened and demanded from Mrs. Anita Rodrigues as to why she was questioning Mr. Felix and that she has no right to do so.

10. When Mrs. Anita Rodrigues told the workman not to intervene, the workman lost his temper and shouted "I will show you". Thereafter he began assaulting her with punches and kicks dropping her down to the ground. Even as she fell on the ground, the workman continued to brutally assault her on her face, arms and torso by punches and kicks. The other colleagues of the workman Mr. Felix Rodricks and Mr. Prakash Bhoir stood as mute spectators. The other employees from the neighbouring department heard the fracas and rushed to the Laundry Department and pulled the workman away and police was also summoned. It was alleged that due to the workman's rude and riotous behaviour the working in the Laundry and surrounding departments was disturbed and the workman was issued an order of suspension dated 16th March, 2005 immediately by the Personnel Officer.

11. The chargesheet dated 19th March, 2005 issued to the workman contained the following charges:

(a) Engaging in riotous, disorderly and indecent behaviour on the premises of he Hospital,

(b) Commission of acts subversive of discipline and good behaviour on the premises of the establishment,

(c) Wilful insubordination and disobedience of lawful orders of Superiors,

(d) Assaulting Superior officer on the premises of the Hospital,

(e) Outraging the modesty of a woman.

12. I have heard Mr. Naidu, the learned Counsel for the Hospital and Mr. Nagle, learned Counsel for the workman.

13. Mr. Naidu, learned Counsel for the Hospital made the following submissions:

(i) that the Labour Court ought not to have disturbed the punishment awarded to the workman when there was a finding of fact arrived at that the workman had assaulted Mrs. Anita Rodrigues within the premises of the Hospital while on duty which was an extremely grave misconduct and the punishment of dismissal was completely justified;

(ii) that having come to a finding that the misconduct was grave and serious, the Labour Court had no jurisdiction to substitute the punishment awarded by the management with any other punishment and under Section 11A of the I.D. Act, the power exercised by the Labour Court can be exercised only if the punishment awarded by the management in respect of the proved misconduct was shockingly disproportionate;

(iii) that the question of considering the past record or the length of service ought not to have been taken into consideration looking to the gravity of the misconduct of the brutal assault by the workman on Mrs. Anita Rodrigues. That in the case of serious misconduct, the length of service is not an extenuating circumstance;

(iv) that the management of the Hospital had in its speaking order, given reasons as to why the punishment of dismissal was imposed upon the workman and the Labour Court ought not to have interfered with the same by showing unwarranted sympathy;

(v) that the finding of sudden provocation as observed by the learned Labour Court was erroneous as there was no such plea in the Statement of Claim and the workman's case was of denial of the acts of any misconduct and, therefore, the finding of the Labour Court was perverse;

(vi) the medical reports which have been produced by way of Compilation of documents would show the injuries which have been caused to the said Mrs. Anita Rodrigues;

14. Mr. Naidu in support of his submissions, relied upon the following judgments:

(i) *Chandrakant k. Patil* v. *Union of India & Ors.*[1] 1995 II CLR 445.

(ii) *U.P. State Road Transport Corporation* v. *Subhash Chandra Sharma and Ors.*[2] AIR 2000 SC 1163.

(iii) *Janata Bazar (South Kanara Central Co-operative Wholesale Stores Ltd,). Etc.* v. *Secretary, Sahakari Noukarara Sangh, etc.*[3] AIR 2000 SC 3129.

(iv) *Breach Candy Hospital and Research Centre and B.B. Pardeshi and Anr.*[4] 2001 (91) FLR 1185.

(v) *Mahindra and Mahindra Ltd.* v. *N.B. Naravde, etc.*[5] AIR 2005 SC 1993.

(vi) *Hombe Gowda Edn. Trust and Anr. and State of Karnataka and Ors.*[6] 2006 (108) FLR 584.

(vii)*State Bank of Mysore and Ors. etc. and M.C. Krishnappa*[7], 2011 (130) FLR 1082.

15. Mr. Nagle, learned Counsel for the workman, on the other hand, submitted as follows:

(i) that the impugned Award so far as denial of back wages and withholding of two increments of the workman permanently was unjust and arbitrary;

(ii)that while denying back wages as well as withholding two increments permanently to the workman, the Labour Court has in fact awarded double punishment which is contrary to law;

1 Ed.: MANU/MH/0259/1995

2 Ed.: MANU/SC/0188/2000: [2000 (85) FLR 284]: JT 2000 (3) SC 184: (2000) I LLJ 1117 SC: (2000) II MLJ 84 (SC): 2000 (2) SCALE 371: (2000) 3 SCC 324: (2000) SCC (L&S) 349: [2000] 2 SCR 451: 2000 (1) UJ 724: (2000) 2 UPLBEC 1199

3 Ed.: MANU/SC/0591/2000: [2000 (87) FLR 483]: JT 2000 (10) SC 589: (2000) II LLJ 1395 SC: 2000 (6) SCALE 446: (2000) 7 SCC 517: (2000) SCC (L&S) 958: [2000] Supp 3 SCR 367

4 Ed.: MANU/MH/0066/2002: 2002 (2) MhLJ 227

5 Ed.: MANU/SC/0138/2005: 2005 (2) ALT 29 (SC): (2005) 2 CALLT 121 (SC): 117 (2005) DLT 697 (SC): [2005 (104) FLR 1218]: [2005 (2) JCR 4 (SC)]: JT 2005 (2) SC 583: 2005 (2) KLT 32 (SC): (2005) I LLJ 1129 SC: (2005) 3 SCC 134: (2005) SCC (L&S) 361: 2006 (1) SLJ 204 (SC): 2005 (2) UJ 792: (2005) 2 UPLBEC 1641

6 Ed.: MANU/SC/2522/2005: 2006 (2) ALT 3 (SC): [2006 (2) JCR 24 (SC)]: JT 2005 (10) SC 598: (2006) I LLJ 1004 SC: 2006-2-LW (Crl) 481: RLW 2006 (1) SC 632: (2006) 1 SCC 430: 2006 (2) SLJ 272 (SC)

7 Ed.: MANU/SC/0743/2011: [2011 (3) JCR 265 (SC)]: JT 2011 (7) SC 91: 2012 (1) KarLJ237: 2011 (3) KLT (SN) 84: (2011) III LLJ 609 SC: 2011LLR857: 2011 (4) PLJR58: 2011 (7) SCALE 337: (2011) 7 SCC 325: (2011) 2 SCC (L&S) 254: [2011] 7 SCR 188

(iii) that the Labour Court had failed to appreciate that during the cross-examination of the workman the Hospital had failed to establish that the workman was gainfully employed nor was any evidence to that effect adduced on behalf of the Hospital;

(iv) that once the dismissal was set aside by the Labour Court, the workman was entitled to reinstatement with full back wages and continuity of service;

(v) that the punishment of denial of back wages and withholding of two increments permanently to the workman awarded by the Labour Court was shockingly disproportionate. The same was also contrary to the principle of double jeopardy as it amounted to awarding double punishment;

(vi) that the workman was having clean and unblemished record;

(vii) that the Hospital was guilty of discrimination between the workman and Mr. Prakash Bhoir and Mr. Felix Rodrigues to whom a common chargesheet was issued and the said persons were let off and are still in service.

16. Mr. Nagle placed reliance upon the following judgments:

(i) *Sengara Singh* v. *State of Punjab*[8] (1983) 4 SCC 225.

(ii) *Palghat BPL & PSP Thozhilali Union* v. *BPL India Ltd. and Anr.*, 1996 I CLR 368.

(iii) *Cadbury India Ltd.* v. *V.B. Save and Ors.*[9] 1996 I CLR 846.

(iv) *Regional Manager R.S.R.T.C.* v. *Ghanshyam Sharma*, 2002 I CLR 150.

(v) *Mysore Paper Mills Limited, Bhadravathi* v. *G. Shekar alias Gyana Shekharan*, 2002 II CLR 160.

17. I have given my anxious consideration to the rival contentions.

18. At the outset, it is required to be noted that there is no challenge to the Award Part I of the Labour Court even in the present Petition filed by the workman. By the Award Part I it was held that the enquiry was fair and proper and the findings were not perverse. These findings have therefore, attained finality. The question that essentially remains to be considered is about the proportionality of the punishment *viz* - whether the punishment of dismissal awarded by the management to the workman was shockingly disproportionate to the charges of proved misconduct and whether the Labour Court ought to have altered the punishment by exercising powers under Section 11A of the I.D. Act. If it is found that the Labour Court ought not to have interfered and altered the punishment, the order to be passed in the Petition of the workman would be only a consequential order.

19. The medical papers of Mrs. Anita Rodrigues were produced before the Enquiry Officer. They disclose the injuries suffered by Mrs. Anita Rodrigues for which she was required to be admitted to the hospital for 6 days before she was discharged. The injuries suffered by Mrs. Anita Rodrigues recorded at the time of her admission to the Hospital are as follows:

(i) Contusion around left eye-Black eye 3 × 2 cm. bluish black colour with sub-conjuntinal haemorrhage left eye medial aspect vision. Slightly blurred-hand vision test.

8 Ed.: MANU/SC/0342/1983: 1983LabIC1670: (1984) I LLJ 161 SC: 1983 (2) SCALE 713
9 Ed.: MANU/MH/0240/1996: 1996 (73) FLR 1262

(ii) Blunt trauma over back and chest. No external injuries seen. Tenderness over spinal region.

(iii) Contusion over forehead and frontal area 4 × 2 cm Tenderness.

(iv) Abrasion over forehead centrally 1cm. × 0.5cm.

(v) Blunt trauma over Rt. Wrist jt. Movement swelling Tenderness.

All the injuries are caused by hard and blunt object and fresh in nature.

20. The Labour Court has arrived at a finding of fact by observing in the impugned order that it was crystal clear that the workman had 'hit' the supervisor Mrs. Anita Rodrigues and that there was no reason to discard her evidence and the treatment papers produced during the enquiry. The learned Counsel on behalf of the workman has not pointed out any perversity in this finding of fact arrived at by the Labour Court. In these circumstances, the fact that Mrs. Anita Rodrigues was severally assaulted by the workman stands established.

21. It is also noticed that the Labour Court, in the impugned order, has observed - "no doubt the proved misconduct against the second party is serious and grave". Curiously however, the Labour Court has further observed that the assault by workman was due to sudden and grave provocation. The latter observation of the Labour Court was clearly unwarranted and was merely an *ipsi dixit* of the Labour Court as it was dehors the pleadings and evidence of the workman. Pertinently, the stand of workman was that of denial simplicitor.

22. Mrs. Anita Rodrigues was a Supervisor and was superior in rank to the workman and belonging to the fairer sex. The incident of assault by the workman was in the precincts of the hospital where patients undergo medical treatment. Both were on duty at the relevant time when the incident took place. Clearly, the Labour Court has shown undue leniency to the workman and only as a matter of misplaced sympathy interfered and altered the punishment of dismissal to that of reinstatement and permanently withholding two increments. The fact that the workman was serving in the hospital for several years and his past record was not adverse, was in my view, not an extenuating circumstance warranting interference with the punishment of dismissal awarded by the management considering the gross facts of the case.

23. Looking to the nature of misconduct, it certainly cannot be said that no reasonable person could inflict the punishment of dismissal nor can it be said that the dismissal order was so disproportionate as to shock the conscience of the Court. Discipline and congenial atmosphere is required to be maintained in any institution. To show leniency in a case such as the present one and to allow the workman to be reinstated would send a wrong signal to the other employees that one can get away lightly even with gross misconduct of assault on his superior. Even assuming for a moment that it was permissible to take a lenient view of the matter, it is of significance to note that at no point of time the workman has shown any remorse or afforded any apology either to Mrs. Anita Rodrigues or to the Hospital and his stand has all along been that of denial simplicitor.

24. The Labour Court, it is well-settled, exercises limited jurisdiction under Section 11A of the I.D. Act. In my view, the Labour Court ought not to have disturbed the order of punishment of dismissal imposed by the management, considering the gravity of proved misconduct. In so far as the contention of the learned Counsel for the workman that there was discrimination between the workman on the one

hand and Mr. Prakash Bhoir and Mr. Felix Rodricks (to whom chargesheets were also issued) on the other hand, who were let off, it is required to be noted that there was no charge of assault on the said two persons and therefore, the case of the workman cannot be equated with them. A contention was also raised by learned Counsel for the workman that there were two chargesheets issued to the workman, which was impermissible. This contention however was not raised before the Labour Court, nor is it found in the present Petition filed by the workman and is raised for the first time before me. In any event, it is not disputed before me that the other chargesheet did not contain the charges relating to assault by the workman. There is thus no merit in the aforesaid submissions urged on behalf of the workman.

25. In *Chandrakant K. Patil* v. *Union of India and Ors.*, 1995 II CLR 445, his Lordship Mr. Justice S.H. Kapadia (as he then was) sitting singly in this Court, held that the past service record is required to be considered as a mitigating circumstance, but it is well-settled that where the delinquent is guilty of serious misconduct, then one single misconduct like theft or connivance therein may warrant dismissal.

26. In *U.P. State Road Transport Corporation* v. *Subhash Chandra Sharma and Ors.*[10], AIR 2000 SC 1163, it was held by the Hon'ble Supreme Court in paragraph 9 as follows:

> (9) The Labour Court, while upholding the third charge against the Respondent nevertheless interfered with the order of the Appellant removing the Respondent, from the service. The charge against the Respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the Appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the Respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the Respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of Respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the Respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous, order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice.

27. In *Janata Bazar (South Kanara Central Co-operative Wholesale Stores Ltd,).* v. *Secretary, Sahakari Noukarara Sangh* AIR 2000 SC 3129, it was held by the Hon'ble Supreme Court that in a case of proved misappropriation there was no question of considering past record and it was the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

10 Ed.: MANU/SC/0188/2000: [2000 (85) FLR 284]: JT 2000 (3) SC 184: (2000) I LLJ 1117 SC: (2000) II MLJ 84 (SC): 2000 (2) SCALE 371: (2000) 3 SCC 324: (2000) SCC (L&S) 349: [2000] 2 SCR 451: 2000 (1) UJ 724: (2000) 2 UPLBEC 1199

28. In *Beach Candy Hospital and Research Centre and B.B. Pardeshi and Anr.*, 2001 (91) 1185, a learned Single Judge of this Court held that to adopt the test which has been laid down by the Supreme Court, the Industrial Court while determining as to whether its interference with penalty imposed by the employer is called for has to have regard to the question as to whether the punishment which has been imposed is highly disproportionate to the degree of guilt of the workman concerned.

29. In *Mahindra and Mahindra Ltd.* v. *N.B. Naravde, etc.*[11] AIR 2005 SC 1993, the Hon'ble Supreme Court held that the Labour Court cannot by way of sympathy alone exercise power under Section 11A and reduce punishment.

30. In *Hombe Gowda Edn. Trust and Anr. and State of Karnataka and Ors.* 2006 (108) FLR 584, the Hon'ble Supreme Court held in paragraphs 12 to 15 as follows:

> (12) The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, *inter alia*, it is found to be grossly disproportionate.
>
> (13) This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be *inter alia* on arriving at a finding that no reasonable person could inflict such punishment The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.
>
> (14) Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as shock one's conscience.
>
> (15) A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important....

31. In *State Bank of Mysore and Ors. etc.* and *M.C. Krishnappa*, 2011 (130) FLR 1082, it was observed by the Hon'ble Supreme Court that it was well-settled that punishment is primarily a function of the Management and the Courts rarely interfere with the quantum of punishment.

32. In so far as the judgments relating to punishment cited by the learned Counsel for the workman are concerned, I do not find any *ratio decidendi* having been laid

11 Ed.: MANU/SC/0138/2005: 2005 (2) ALT 29 (SC): (2005) 2 CALLT 121 (SC): 117 (2005) DLT 697 (SC): [2005 (104) FLR 1218]: [2005 (2) JCR 4 (SC)]: JT 2005 (2) SC 583: 2005 (2) KLT 32 (SC): (2005) I LLJ 1129 SC: (2005) 3 SCC 134: (2005) SCC (L&S) 361: 2006 (1) SLJ 204 (SC): 2005 (2) UJ 792: (2005) 2 UPLBEC 1641

down in the said judgments as regards the powers of the Labour Court in interfering with the punishment imposed by the management and the findings therein would be confined to the facts in those cases. The said judgments would therefore not be of any assistance to the workman.

33. The upshot of the aforesaid discussion is that in the passing of the impugned award, the Labour Court had clearly exceeded its jurisdiction under Section 11A of the I.D. Act and the impugned award cannot be sustained and deserves to be set aside. Hence, the following order:

(i) Writ Petition No. 1646 of 2011 filed by the Hospital is allowed and Rule is made absolute in terms of Prayer Clause (a).

(ii) For the self-same reasons, Writ Petition No. 2225 of 2011 filed by the workman is dismissed and Rule is discharged.

(iii) No order as to costs.

34. The learned Counsel for the Hospital, after taking instructions from Sr. Reena, Director, HRD, states that the gratuity amount of the workman which was forfeited by the management shall be paid to the workman within 4 weeks from today. The statement is accepted.

(A.A. Sayed, J.)

(i) *Chandrakant k. Patil* v. *Union of India and Ors.*, 1995 II CLR 445 wherein a learned Single judge of this Court has held that the past service record is required to be considered as a mitigating circumstance, but it is well-settled that where the delinquent is guilty of serious misconduct, then one single misconduct like theft or connivance therein may warrant dismissal.

(ii) *U.P. State Road Transport Corporation* v. *Subhash Chandra Sharma and Ors.* AIR 2000 SC 1163 wherein it was held by the Hon'ble Supreme Court in paragraph 9 as follows:

> (9) The Labour Court, while upholding the third charge against the Respondent nevertheless interfered with the order of the Appellant removing the Respondent, from the service. The charge against the Respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the Appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the Respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the Respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of Respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the Respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice.

(iii) *Janata Bazar (South Kanara Central Co-operative Wholesale Stores Ltd,). etc.* v. *Secretary, Sahakari Noukarara Sangh, etc.* AIR 2000 SC 3129 wherein it was held

by the Hon'ble Supreme Court that in a case of proved misappropriation there was no question of considering past record and it was the discretion of the employer to consider to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

(iv) In *Beach Candy Hospital and Research Centre and B.B. Pardeshi and Anr.*, 2001 (91) 1185, a learned Single Judge of this Court held that to adopt the test which has been laid down by the Supreme Court, the Industrial Court while determining as to whether its interference with penalty imposed by the employer is called for has to have regard to the question as to whether the punishment which has been imposed is "highly disproportionate to the degree of guilt of the workman concerned."

(v) In *Mahindra and Mahindra Ltd.* v. *N.B. Naravde, etc.* AIR 2005 SC 1993 Hon'ble Supreme Court held that the Labour Court cannot by way of sympathy alone exercise power under Section 11A and reduce punishment.

(vi) In *Hombe Gowda Edn. Trust and Anr. and State of Karnataka and Ors.* 2006 (108) FLR 584 the Hon'ble Supreme Court held in paragraphs 12 to 15 as follows:

> (12) The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.
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> (13) This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be *inter alia* on arriving at a finding that no reasonable person could inflict such punishment The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.
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> (14) Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as shock one's conscience.
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> (15) A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court.

(vii) In *State Bank of Mysore and Ors.* etc. and *M.C. Krishnappa*, 2011 (130) FLR 1082, it was observed by the Hon'ble Supreme Court that it was well-settled that punishment is primarily a function of the Management and the Courts rarely interfere with the quantum of punishment.

(i) *Sengara Singh* v. *State of Punjab*[12] (1983) 4 SCC 225, wherein it was held by the Hon'ble Supreme Court that the workman was entitled to

be treated on par with others in the matter of reinstatement and consequential benefits and there cannot be any arbitrariness in picking and choosing reinstatement and that could be termed as violation of Article 14 of the Constitution of India;

(ii) *Palghat BPL & PSP Thozhilali Union* v. *BPL India Ltd. and Anr.*, 1996 I CLR 368, wherein it was held by the Hon'ble Supreme Court that the Labour Court was justified in taking lenient view by directing cut by 75 per cent in back wages where the company had dismissed services of three workmen for assaulting company's officer outside the company's premises;

(iii) In *Cadbury India Ltd.* v. *V.B. Save and Ors.*, 1996 I CLR 846, which was a case where the Respondent workman was guilty of assaulting a co-workman and was dismissed from service, a learned Single Judge of this Court had interfered and held that the ends of justice would be adequately met if the workman is reinstated with continuity of service and deprivation of full back wages;

(iv) In *Regional Manager R.S.R.T.C.* v. *Ghanshyam Sharma*, 2002 I CLR 150, a three-Judge Bench of the Hon'ble Supreme Court held that the discretion under Section 11A has to be used judiciously by the Labour Court;

(v) In *Mysore Paper Mills Limited, Bhadravathi* v. *G. Shekar alias Gyana Shekharan*, 2002 II CLR 160, a Division Bench of the Karnataka High Court held that in a case where a workman was chargesheeted for assaulting his superior officer was initially dismissed on having found guilty of the misconduct and the Labour Court has set aside the order of dismissal and directed reinstatement with 50 per cent back wages. The learned Single Judge setting aside the order of dismissal by the Labour Court but awarded full back wages for the period from the date of award till the date of reinstatement. In the writ appeal by the Management, the Division Bench observed that departmental proceedings and criminal proceedings can be initiated and can go simultaneously and an order of acquittal in criminal case cannot *ipso facto* conclude the departmental proceedings and the Division Bench confirmed the finding that the order of dismissal was not legal, as the Labour Court, on appreciation of material on record, independently came to the conclusion that the misconduct has not been proved.

35. It is by now trite that under Section 11A of the Industrial Disputes Act, 1947 the power exercised by the Labour Court particularly when the Award Part I is held against the workman is only to see if the punishment was shockingly disproportionate to the proved misconduct. Pertinently, in the Statement of Claim the case of the workman was that of denial simplicitor. The finding of the Labour Court that there was sudden and grave provocation by the supervisor was merely on *ipsi dixit* of the Labour Court *dehors* the pleading and evidence of the workman. When the case of the workmen was of denial. A case of sudden and grave provocation can arise only when there was an admission of guilt. In the circumstances, the findings of the Labour Court was clearly perverse particularly when the Labour Court itself holds in the impugned Award that "no doubt the proved misconduct against the second party is serious and grave." It appears that

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the Labour Court was overawed. It appears that the Labour Court was overawed by the fact that the workman was serving the Hospital for about 16 years and had a clean and unblemished record and the Labour Court has as a matter of sympathy altered the punishment by directing reinstatement and two increments of the workman came to be withheld permanently instead of the punishment of dismissal by the management which was impermissible more particularly in the gross facts and circumstances of the present case.

36. Considering the overall overall facts and circumstances, particularly when the said Mrs. Anita Rodrigues who was the supervisor and who was superior in rank to the workman and was a lady and the incident of assault and consequent injuries suffered by Mrs. Anita Rodrigues, the punishment awarded to the workman cannot at all be said to be shockingly disproportionate to the nature of the charge which was found proved against him. The Labour Court could not have substituted the punishment imposed by the employer in the gross facts and circumstances of the present case and the Labour Court ought not to have interfered with the said penalty which was imposed by the employer. In *Mahindra and Mahindra Ltd.* v. *N.B. Naravade, etc.* AIR 2005 SC 1993 the Supreme Court has held that the exercise of power under Section 11A by the Labour Court cannot be exercised to reduce the punishment on the ground of sympathy. Looking to the nature of misconduct it certainly cannot be said that no reasonable person could inflict such punishment or that the dismissal was wholly disproportionate so as to shock one's conscience. Discipline and congenial atmosphere is required to be maintained in any institution. More particularly in a hospital where patients are undergoing treatment. In so far as the contention of the learned Counsel for the workman that there was discrimination between the workman and Mr. Prakash Bhoir and Mr. Felix Rodricks to whom chargesheets were also issued but they were laid off, it is required to be noted that so far as the said two persons are concerned, there was no charge of assault and, therefore, the case of the workman cannot be equated with that of the said persons. A contention was also raised by learned Counsel for the workman that there was two chargesheets issued to the workman which was impermissible. This contention however, was not raised before the Labour Court, nor is it found in the present petition and is raised for the first time before me. In any event, it is not in dispute that the other charge- sheet did not contain the charges of assault by the workman nor was it pressed against the workman.

37. In the circumstances, in my view, looking to the gravity of the misconduct, the Labour Court ought not to have interfered with the punishment of dismissal awarded by the management and shown leniency and taken a sympathetic view more so, when the workman has not shown any remorse or afforded any apology for his grave acts of assault on a lady supervisor at work which required medical treatment and to the contrary taken a stand of denial simplicitor.

38. Having come to the conclusion that the workman had assaulted Supervisor Mrs. Anita Rodrigues and that the misconduct was serious and grave, there was no propriety for the Labour Court to show misplaced sympathy. The punishment awarded was not such to have shocked the conscience of the Court. In so far as the contention of the learned Counsel particularly in view of the Part I Award holding that the enquiry was fair and proper and was not perverse to which there is no challenge, the Labour Court, in my view, ought to have been rather slow in disturbing the punishment imposed by the management considering the gravity of the misconduct proved against him.