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M/S. L&T KOMATSU LTD.

v.

N. UDAYAKUMAR

DECEMBER 3, 2007

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Industrial Disputes Act, 1947—ss. 10 (4A) as introduced by State of Karnataka) and 11 A—Dismissal from service—By management Pursuant to disciplinary proceedings—On the charge of absence from duty—Industrial dispute—Courts below upholding the charge, but reducing the punishment—On appeal, held: In view of the fact that workman was habitual absentee from duty, punishment of dismissal justified—Interference by courts below with the quantum *of punishment not correct.*

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Respondent-workman was dismissed from service by appellant-Management, pursuant to disciplinary proceedings on the charge of unauthorized absence from duty. Industrial dispute was raised. Labour Court though concurred with the finding of unauthorized absence of workman, but found the punishment disproportionate to the gravity of the charge. It directed his reinstatement with continuity of service, but without back wages. It awarded punishment of stoppage of four increments with cumulative effect. In Writ Petition, Single Judge of High Court modified the award, directing reinstatement without continuity of service. Management as well as workman filed writ appeals. Division Bench of High Court dismissed the appeal of management. It allowed that of the workman upholding the order of Labour Court.

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In appeal, to this Court management contended that habitual absentism was gross violation of discipline; and that the punishment was reduced without keeping in view the parameters for the exercise of jurisdiction u/s. 11A of Industrial Disputes Act, 1947.

Allowing the appeal, the Court

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HELD: In the factual background, and in the light of principles that habitual absentism means the gross violation of discipline and that discretion to interference with *quantum* of punishment awarded by management is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment, (ii) the inevitable conclusion is that the Labour Court and the High Court were not justified in directing the reinstatement by interference with the order of termination. The Order of termination as passed by the concerned authority stands restored. [Paras 7, 9 and 11] [823-G; 825-G; 826-A, B; 829-B-C]

M/s. Burn and Co. Ltd. **v.** *Their Workmen and Ors.,* **AIR (1959) SC 529;** *Life Insurance Corporation of India* **v.** *R. Dhandapani,* **AIR (2006) SC 615;** *Mahindra and Mahindra Ltd.* **v.** *N.B. Narawade,* **[2005] 3 SCC 134 and** *M.P. Electricity Board* **v.** *Jagdish Chandra Sharma,* **[2005] 3 SCC 401, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3852 of 2006.

From the final Judgmnet and Order dated 10.8.2005 of the High Court of Karnataka at Bangalore in W.A. Nos. 2449 and 2722/2005 (L-TER).

Sudhir Chandra, Bharat Sangal, R.R. Kumar, S. Chatterjee, P. Das and Bhagabati Prasad for the Appellant.

S. Nanda Kumar, Satish Kumar, G. Ananda Selvam and V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1.Challenge in this appeal is to the judgment rendered by a Division Bench of the Karnataka High Court allowing the writ appeal filed by the respondent (hereinafter referred to as the 'workman')while dismissing the writ appeal filed by the appellant.

A 2. Undisputed background facts are as follows:

Respondent had been working as an employee with M/s. L&T Komatsu Ltd., Bangalore. He remained absent unauthorisedly for 105 days between 1.8.2000 and 30.4.2001. Disciplinary proceedings were B initiated against him and a regular departmental enquiry was held. It is common case of the parties that the charge of unauthorized absence was proved in the said enquiry which has been found to be fair and proper and in accordance with the principles of natural justice. The enquiry report was accepted by the management and the respondent was dismissed from C service. This dismissal gave rise to an industrial dispute and the workman filed an application under Sub-section (4A) of Section 10 of the Industrial Disputes Act, 1947 (as introduced in the State of Karnataka) (for short the 'Act'). On a consideration of oral and documentary evidence led by the parties and having regard to the fact that the workman had been D remaining absent on several occasions, the Labour Court found that though the workman was remaining absent unauthorisedly, the extreme punishment of dismissal from service was too harsh and disproportionate to the gravity of the charge and that lesser punishment would meet the ends of justice. Accordingly, the order of dismissal was set aside and the management E was directed to reinstate the workman with continuity of service but without back wages. The Labour Court awarded the punishment of stoppage of four increments with cumulative effect. This award came to be challenged by the management in the writ petition. On a consideration of the contentions advanced before him the Learned Single Judge modified F the award and deprived the workman from continuity of service. In other words, management was directed to reinstate the workman without continuity of service while maintaining the remaining part of the award. It is against this order that both the management and the workman filed writ appeals before the Division Bench.

G 3. Learned Single Judge noted that there were proved cases of misconduct of unauthorized absentism for 15 times but the workman had not improved his conduct. Notwirhstanding this finding, learned Single Judge held that at the relevant point of time the workman was not well and was taking treatment at St. Martha Hospital. Accordingly it was held
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that the order of termination is harsh under the facts and circumstances of the case but looking into the past history directed reinstatement without continuity of service and without back wages. By the impugned order the Division Bench allowed the appeal filed by the respondent while dismissing the appeal filed by the present appellant.

4. In support of the appeal learned counsel for the appellant submitted that it was not for the first time that the respondent was guilty of absentism; on the contrary there were 15 such earlier instances without any justifiable reason. The Labour Court directed reinstatement with continuity of service but not back wages. Learned Single Judge, on the other hand, instead of holding that the interference of the Labour Court with the quantum of punishment was not justified, directed reinstatement without continuity of service and back wages. The Division Bench with noticing the relevant factors has directed reinstatement without back wages but with continuity of service.

5. It is submitted that habitual absentism is gross violation of discipline. It is also submitted that the parameters for the exercise of Section 11A of the Act have not been kept in view by the labour Court and the High Court.

6. In response, learned counsel for the respondent submitted that because of personal problems there was unintentional absence and that should not have been seriously viewed. The reply to the second show cause notice on which the emphasis is laid by the appellant to contend that respondent had admitted his guilt was taken under coercion. It is also submitted that the discretion for exercise of jurisdiction under Section 11A has been rightly exercised.

7. So far as the question whether habitual absentism means the gross violation of discipline, it is relevant to take note of what was stated by this Court in *M/s. Burn & Co. Ltd.* v. *Their Workmen and Ors.*, AIR (1959) SC 529.

> "There should have been an application for leave but Roy thought that he could claim as matter of right leave of absence though that might be without permission and though there might not be any

A application for the same. This was gross violation of discipline. Accordingly, if the company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with the services altogether. In our opinion, when the B Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension".

8. In *Life Insurance Corporation of India* v. *R. Dhandapani*, AIR C (2006) SC 615, it was held follows:

"It is not necessary to go into in detail regarding the power exercisable under Section 11A of theAct. The power under said Section 11A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to D interfere with the decision of a management under Section 11A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case E may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

F 9. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify G the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be H principled and supportable on those findings. Expansive judicial

mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: *Kerala Solvent Extractions Ltd.* v. *A. Unnikrishnan and Anr.,* (1994) 1 SCALE 631].

Though under Section 11A, the Tribunal has the power to reduce the *quantum* of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

The High Court found that the Industrial Tribunal had not indicated any reason to justify variations of the penalty imposed. Though learned Counsel for the respondent tried to justify the Award of the Tribunal and submitted that the Tribunal and the learned Single Judge have considered the case in its proper perspective, we do not find any substances in the plea. Industrial Tribunals and Labour Courts are not forums whose task is to dole out private benevolence to workmen found by Labour Court/ Tribunal to be guilty of misconduct. The Tribunal and the High Court, in this case, have found a pattern of defiance and proved misconduct on not one but on several occasions. The compassion which was shown by the Tribunal and unfortunately endorsed by learned single Judge was fully misplaced."

9. In *Mahindra and Mahindra Ltd.* v. *N.B. Narawade,* [2005] 3 SCC 134, is was noted as follows:

"It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion

A which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the B past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in tow of the cases C cited before us i.e. *Orissa Cement Ltd.* and *New Shorrock Mills* this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate ." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used the D the workman is such that is cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove".

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10. Again in *M.P. Electricity Board* v. *Jagdish Chandra Sharma,* [2005] 3 SCC 401, this Court dealt with the matter as follows:

"The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question F is whether the punishment imposed was so harsh or so disproportionate to the chargeproved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a G bledding and broken nose. It has also been found that this incident was followed by the unauthorized absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107-A of the Act to interfere with

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punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal can be exercisedby the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interferewith the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In *U.P. SRTC* v. *Subhash Chandra Sharma* this Court, after referring to the scope of interference with punishment under Section 11-A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In *Krishnakali Tea Estate* v. *Akhil Bharatiya Chah Mazdoor Sangh*, this Court after referring to the decision in *State of Rajasthan* v. *B.K. Meena* also pointed out the of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment."

It may also be noticed that in *Orissa Cement Ltd.* v. *Adikanda Sahu* and in *New Shorrock Mills* v. *Maheshbhai T. Rao*, this Court held that use of abusive language against a superior,

A justified punishment of dismissal. This Court stated "punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in *Muriadih* B *Colliery BCC Ltd.* v. *Bihar Colliery Kamagar Union* this Court after referring to and quoting the relevant passages from *Krishnakali Tea Estate* v. *Akhil Bharatiya Chah Mazdoor Sangh* and *Tournamulla Estate* v. *Workmen held:* (SCC p. 336, para 17) difference between the approaches to be made in a C criminal proceeding and a disciplinary proceeding. This Court also pointed out that when chares proved were grave, *vis-a-vis* the establishment, interference with punishment of dismissal could not be justified. In *Bharat Forge Co. Ltd.* v. *Uttam Manohar Nakate* this Court again reiterated that the jurisdiction to interfere D with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. E It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Lablur Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply F authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in *Mahindra and Mahindra Ltd.* v. *N.B. Narawade*. This Court summed up the position thus: (SCC p. 141, para 20)

G "20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty. "The courts H below by condoning an act of physical violence have

> undermined the discipline in the organization, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal."

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11. When the factual background is considered in the light of principles indicated above, the inevitable conclusion is that the Labour Court and the High Court were not justified in directing the reinstatement by interference with the order of termination. The orders are accordingly set aside. The Order of termination as passed by the concerned authority stands restored. The appeal is allowed with no orders as to costs.

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K.K.T. Appeal allowed