**SUPREME COURT OF INDIA**

J.K.Synthetics Limited

Vs

K.P.Agrawal & Anr.

(B.P.Singh and R.V.Raveendran,JJ.,)

01.02.2007

**JUDGMENT**

**R.V.Raveendran, J.**

1. This appeal by special leave is against the judgment dated 28.7.2003 of the Allahabad High Court rejecting Civil Misc. W.P. No.10713/83 filed by the appellant challenging the award dated 8.3.1983 and subsequent modification order dated 29.6.1983 of Labour Court II, Kanpur.

2. Brief facts necessary for disposal of this appeal are as under :

> "2.1) The first respondent was working as an Assistant in the appellant company. He was issued three charge-sheets dated 5.2.1977, 17.2.1977 and 24.2.1977 (amended on 1.3.1977). First respondent filed his objections/explanation in respect of each charge-sheet. An inquiry was held into the charges. Accepting the report of the Inquiry Officer, which held that the charges were proved, the employer imposed the punishment of dismissal on the first respondent, by order dated 6.4.1977.
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> 2.2) Conciliation proceedidngs initiated in respect of such dismissal, failed. Consequently, the State Government referred the following dispute to the Labour Court for adjudication:
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> "Whether the termination of the services of its workman Shri Kashi Prasad (s/o Shri Lala Shyam Lal), Assistant, Accounts Department by the Employers from 6.4.1977 is proper, and/or legal ? If not, for what benefits/compensation the workman is entitled to and any other, with details."
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> 2.3) By order dated 20.12.1980, the Labour Court held that the inquiry was not fair and proper, and permitted parties to adduce evidence. The Labour Court made its award dated 8.3.1983. The Labour Court held that the charge of insubordination and disorderly behaviour in the first charge-sheet, was not proved. The charge under the second charge-sheet, that the first respondent made false (indecent) allegations against his superior officer, and thereby violated office discipline, was held to be

proved. In regard to the charge under the third charge-sheet, the Labour Court found that the employee had admitted that he had not prepared the annual accounts correctly, but gave the employee the 'benefit of doubt' by holding that the mistakes in the accounts might not have been committed knowingly or deliberately, and therefore, may not amount to habitual negligence or carelessness. Thus in effect, the findings in regard to three charges were (i) not proved, (ii) proved, and (iii) entitled to benefit of doubt. On the said findings, it made an award dated 8.3.1983, the operative part of which reads thus :

"The concerned workman has been working in the company for four years and there was no such complaint against him in the past, hence instead of the punishment of termination of service as a result of Ex. E-2 (dated 17.2.1977) being proved against him, I deem it proper that the increments of two years of the concerned workman should be stopped as punishment."

The said award was published on 27.4.1983 and became enforceable from 27.5.1983.

2.4) On 4.5.1983, first respondent filed an application under section 6(6) of the U.P. Industrial Disputes Act, 1947 ('Act' for short) seeking corrections of the award, stating that the workman was entitled to reinstatement with continuity of service and full back-wages from 6.4.1977. The appellant resisted the said application contending inter alia that (i) the Labour Court became functus officio after publication of the award on 27.4.1983 and therefore, it could not amend the award; (ii) the prayer amounted to seeking review of the award, and there was no jurisdiction or power to grant such relief; and (iii) the first respondent was not entitled to the relief of back-wages, as the Labour Court had held that a misconduct was proved.

2.5) The Labour Court by order dated 29.6.1983 allowed the application under section 6(6) and added the following paragraph at the end of the Award, on the ground that it had been omitted due to an accidental slip :

"Hence, it is my decision in this case that the termination of services of Mr. Kashi Prasad Agarwal, Assistant, Accounts Department from 6.4.77 by his employer will not be justified but instead, his two annual increments which were admissible to him after the date of his termination, i.e. 6.4.77, be stopped. In view of the punishment of stoppage of two annual increments, the employer shall pay the full wages of the period under unemployment i.e. 6.4.77 to the date of reinstatement in which the amount which was paid to the workman as interim relief or any other mode, shall be adjusted." [emphasis supplied]

2.6) Appellant challenged the said award and the amendment thereto in C.M.W.P. No.10714/83. A learned Single Judge of the High Court vide order dated 28.7.2003 dismissed the petition holding as follows :

"From a perusal of the award of the labour court, it is apparent that the tenor of the

order is that the workman could not be punished by resorting to termination. The spirit of the order also shows that in fact the labour court had in mind to grant back-wages to the workman, but by omission, the aforesaid mistake has crept in. The contention of the learned counsel for the petitioner cannot be accepted and in my opinion, there was an omission which could be corrected under section 6(6). Though a plea has been made that the court becomes functus officio after tendering the award, in my view, this argument has only to be stated to be rejected. Section 6(6) gives power to the labour court for making corrections in an award."

Referring to the submission of learned counsel for the employee that he had not been reinstated in spite of refusal of stay, the learned Single Judge observed thus :

"Learned counsel for the respondent workman has submitted that in spite of the aforesaid fact till date the petitioner has not reinstated the workman and, therefore, even equity is against him. A petitioner, who willfully violates lawful orders is not entitled to equitable discretion under Article 226 of the Constitution Of India, 1950"

3. The said order of the learned Single Judge, is challenged in this appeal by special leave. On the contentions urged, the following questions arise for consideration :

"(i) Whether a provision enabling a court to correct any clerical or arithmetical mistake, or error in the order arising from any accidental slip or omission, empowers the Labour Court to grant a relief of back- wages, which was not granted in the original award.

(ii) When the punishment of dismissal is substituted by a lesser punishment (stoppage of increments for two years), and consequently, the employee is directed to be reinstated, whether the employee is entitled to back-wages from the date of termination to date of reinstatement.

(iii) Whether on the facts and circumstances, the Labour Court was justified in interfering with the punishment of dismissal.

(iv) If the employer was otherwise entitled to relief, whether it could be denied on the ground that it had failed to reinstate the employee, in spite of the non-stay of the direction for reinstatement

Re: Question (i)"

4. Section 6(6) of the Act provides that a Labour Court may either on its own motion or on the application of any party to the dispute, correct any clerical or arithmetic mistakes in the award or errors arising therein from any accidental slip or omission. The question is whether in exercise of such power, the Labour Court could have awarded back-wages, even though the original award was silent on that issue.

5. While considering the scope of a similar provision (Rule 83 of the Orissa Sales Tax Rules), this Court in Master Construction Co. (P) Ltd., vs. State of Orissa Â observed thus :

> "An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake. But, however wide the said expressions are construed, they cannot countenance a re-argument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance."

*6. Section 6(6) itself was considered in Tulsipur Sugar Company Ltd., vs. State of U.P*[1]. . In that case, two questions were referred to Labour Court : (i) fitment of certain workmen in a new grade; and (ii) the date from which such fitment should have effect. The Labour Court made an award holding that the workmen should be fitted into certain grades and directed the employer to do so within one month after the award became enforceable. But it omitted to fix the date from which such fitment should be effected. The employer fitted the workmen in the new grades prospectively. The employees-Union applied under section 6(6) of the Act to amend the award on the ground that it had omitted to answer the second question referred to it. The Labour Court allowed the application and amended the award and directed the employer to place the workmen in their respective grades from 1.1.1960. The said amendment to the award was challenged on the ground that it was not a consequence of any clerical or arithmetic error or accidental slip/omission. It was also contended that power under section 6(6) can only be exercised before the date on which the award became enforceable and not thereafter. This Court negatived the said contentions. This Court held that the reference comprised two questions, the first relating to fitment, and the second relating to the date from which such fitment was to have effect; that the award as originally made answered the first question but did not decide the second question; that as the reference was in respect of two questions, the Labour Court was bound to answer the second question also; and the failure to do so was an error in the award due to an accidental slip or omission and that could be corrected under section 6(6). This Court also held that section 6(6) does not lay down expressly any time limit within which the correctional jurisdiction could be exercised and, therefore, was not barred by limitation.

7. Section 6(6) again came up for consideration in *U.P.SRTC vs. Imtiaz Hussain* [2] which related to the removal of a conductor after he had been found guilty of a charge in domestic inquiry. An industrial dispute was raised questioning the legality of the order of removal. The

Labour Court held that the inquiry was not fair and proper and therefore, the removal was bad. The Labour Court ordered reinstatement but held that the employee was not entitled to any back wages, as his name was not found in the list of permanent conductors. An application was filed under section 6(6) of the Act contending that the conclusion of the labour court that he was not in the permanent list was not correct. The Labour Court allowed the application and modified the award. It issued certain directions about payment of salary, allowances etc., from the date of termination till reinstatement with continuity of service, though his name was not in the waiting list. This Court held that such amendment or modification of the award was impermissible in exercise of power under section 6(6). This Court observed :

> "Section 6(6) of the U.P. Industrial Disputes Act, 1947 is similar to section 152 Code Of Civil Procedure, 1908. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 Code Of Civil Procedure, 1908 are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it."

8. A careful reading of section 6(6) and the two decisions shows that the two decisions considered two different situations. In Tulsipur Sugar Company, this Court found that the reference to the Labour Court consisted of two parts. The award answered only the first part and had omitted to answer the second (consequential) part. While modifying the award on an application under section 6(6), the Labour Court neither upset nor altered any of the findings recorded in its original award, but only answered the second part of the reference, which had earlier been omitted. Therefore, this Court held that such correction was permissible. On the other hand in Imtiaz Hussain, the Labour Court, in its award had specifically refused back-wages to the employee on the ground that his name was not in the list of permanent employees. But on an application under section 6(6), it re-examined the issue and held that though his name was not in the list of permanent employees, he was entitled to payment of salary and allowances from the date of termination till the date of reinstatement with continuity of service. In Tulsipur Sugar Company, there was a correction of an omission which fell within section 6(6). In Imtiaz Hussain, there was a review of the original order which of course, was impermissible. We may now summarize the scope of section 6(6) of the Act thus :

> "a) If there is an arithmetical or clerical or typographical error in the order, it can be corrected.
>
> b) Where the court had said something which it did not intend to say or omitted

something which it intended to say, by reason of any accidental slip/omission on the part of the court, such inadvertent mistake can be corrected.

c) The power cannot be exercised where the matter involves rehearing on merits, or reconsideration of questions of fact or law, or consideration of fresh material, or new arguments which were not advanced when the original order was made. Nor can the power be exercised to change the reasoning and conclusions."

9. In this case, the reference to Labour Court consisted of two parts - whether the termination of the workmen was proper and legal, and if the answer was in the negative, then the benefits or compensation to which the workmen was entitled. The award originally made, answered the first part in the negative, but did not answer the consequential second part of the reference. In fact the award ended rather abruptly. On an application being made under section 6(6), the Labour Court recorded that it had accidentally omitted to answer the second part of the reference and rectified the omission by adding a paragraph. This case, therefore, squarely falls under Tulsipur Sugar (supra). We are of the view that the Labour Court had the power to amend the award.

10. But whether such modification was warranted, is a different question. The next question, therefore, is whether the facts and circumstances warrant grant of back-wages, assuming that the punishment imposed was excessive.

Re: Question (ii)

11. Learned counsel for the employee relied on several decisions of this Court to contend that where the order of dismissal or removal is set aside and the employee is directed to be reinstated, full back-wages should follow as a matter of course. Reliance is placed on the decisions of this Court in *Hindustan Tin Works Pvt. Ltd., vs. Employees of Hindustan Tin Works Pvt. Ltd.*[3] Surendra *Kumar Verma vs. Central Government Industrial Tribunal-cum-Labour Court, New Delhi*[4] and *Mohan Lal vs. Bharat Electronics Ltd.*[5] .

12. Hindustan Tin Works Pvt. Ltd (supra), related to retrenchment of some workmen on the ground that the employer was suffering mounting losses. The labour court held that the real reason for retrenchment was the annoyance felt by the management when the employees refused to agree to its terms. Consequently, it directed the reinstatement with full back wages. That was challenged by the employer. This Court granted leave to appeal, only in regard to the question of back-wages, as it did not consider it necessary to interfere with the direction for reinstatement. Ultimately, while reducing the back-wages to 75%, this Court observed as follows:

"If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to

sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.

In the very nature of things there cannot be a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour." [emphasis supplied]

13. Surendra Kumar Verma (supra) related to retrenchment of several workmen in violation of section 25-F of the Industrial Disputes Act, 1947 ('ID Act' for short). This Court held that when the order of termination is set aside as being invalid and inoperative, it must ordinarily lead to reinstatement as if the order of termination was never made and that would necessarily lead to back-wages too. This Court, however, observed that there may be exceptional circumstances which may make it impossible or wholly inequitable vis-'-vis employer and workmen to direct reinstatement with full back-wages as for example, when the industry might have closed down or might be in severe financial doldrums or where the concerned employee might have secured other employment elsewhere and in such situations, the court has the discretion to deny full back-wages. In the concurring judgment Pathak J. (as he then was), held as follows :

"Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief. It has not been shown to us on behalf of the respondent why the ordinary rule should not be applied."

14. Mohan Lal (supra) also related to retrenchment not in consonance with section 25-F of ID Act. This Court held:

> "As pre-condition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as *Ruby General Insurance Co. Ltd., vs. Chopra (P.P)*[6] and *Hindustan Steels Ltd., vs. A. K. Roy* [7] , it was held that the court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case."

15. But the manner in which 'back-wages' is viewed, has undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. We may refer to the latest of a series of decisions on this question. In *U.P. State Brassware Corpn. Ltd. vs Udai Narain Pandey*[8], this Court following *Allahabad Jal Sansthan vs. Daya Shankar Rai* [9], and *Kendriya Vidyalaya Sangathan vs. S. C. Sharma*[10] held as follows :

> "A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance."
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> "although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the courts realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched... The changes (were) brought about by the subsequent decisions of the Supreme Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing, is evident.

16. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of

each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of section 6- N of the U.P. Industrial Disputes Act, 1947. While granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages cannot therefore be the natural consequence.

17. In *General Manager, Haryana Roadways vs. Rudhan Singh*[11] , this Court observed :

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

16. There has also been a noticeable shift in placing the burden of proof in regard to back wages. In Kendriya Vidyalaya Sangathan (supra), this Court held :

> "When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

17. In U.P. State Brassware Corpn. Ltd. (supra), this Court observed :

> "It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of

section 106 of the Indian Evidence Act, 1872 or the provisions analogous thereto, such a plea should be raised by the workman."

17. There is also a misconception that whenever reinstatement is directed, 'continuity of service' and 'consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed. We may in this behalf refer to the decisions of this Court in *A.P.S.R.T.C. v. S. Narasa Goud* [12] *A.P.S.R.T.C. v. Abdul Kareem*[13] and *R.S.R.T.C. v. Shyam Bihari Lal Gupta*[14]

18. Coming back to back-wages, even if the court finds it necessary to award back-wages, the question will be whether back-wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back- wages, in addition to the several factors mentioned in Rudhan Singh (supra) and Udai Narain Pandey (supra). Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

19. But the cases referred to above, where back-wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or section 11A of the Industrial Disputes Act, 1947 (or any other similar provision) is exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. and if reinstatement is directed, it can be effective either prospectively from the date of such

substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination.

21. In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all.

Re: Question (iii)

22. This takes us to the next question as to whether the Labour Court was justified at all in interfering with the punishment of dismissal. The Labour Court held that one serious charge was proved, another charge was not proved and in regard to the third charge gave 'benefit of doubt' to the employee. The Labour Court also relied on the decisions of this Court in Rama *Kant Misra vs. State of U.P*[15]. wherein it was held that the punishment of dismissal was excessive where the employee was found to have uttered indecent words and used abusive language and substituted it by the lesser punishment of stoppage of two annual increments. The said decision depended on its special facts and may not apply to this case. The recent trend in regard to scope of interference with punishment in matters involving discipline at the workplace has been different. We may refer to some of the recent decisions.

23. In *Hombe Gowda Educational Trust v. State of Karnataka* [16], this Court stressed the need to give importance to discipline at the workplace. This Court observed :

> "This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity."

24. In *Mahindra and Mahindra Ltd. vs. N. B. Narawade* [17] , this Court considered a case where a workman used abusive and filthy language against his superior officer, in the presence of his subordinates. He was terminated after conducting an inquiry. Labour Court found the punishment to be excessive and in exercise of power under section 11A of the ID Act, imposed a lesser punishment. This Court held that the misconduct cannot be termed to be an indiscipline calling for lesser punishment than termination. A similar view was taken in *Orissa Cement vs. Adikand Sahu*[18] and *New Shorrock Mills vs. Mahesh Bhai T Rao* [19].

25. In *U.P. SRTC vs. Subhash Chandra Sharma*[20], this Court held that the punishment of removal, for abusing and threatening another employee, was not shockingly disproportionate to the gravity of the offence. In that case also, only one among three charges was established and the Labour Court had interfered w

> "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."

26. *In Bharat Forge Co. Ltd., vs. Uttam Manohar Nakate* [21] *M.P. Electricity Board vs. Jagdish Chandra Sharma* [22]*, and Regional Manager, Rajasthan State Road Corporation vs. Ghanshayam Sharma*[23] this Court held that power undersection 11A of ID Act (or under similar provisions) cannot be used to interfere with the quantum of punishment, on irrational or extraneous factors, or on compassionate grounds. This Court also observed that though section 11A gives the jurisdiction and power to the labour court to interfere with the quantum of punishment, the discretion has to be used judiciously and not capriciously. This Court observed that harsh punishment wholly disproportionate the charge should be the criterion for interference.

27. In this case, we have already found that the charge established against the employee was a serious one. The Labour Court did not record a finding that the punishment was harsh or disproportionately excessive. It interfered with the punishment only on the ground that the employee had worked for four years without giving room for any such complaint. It ignored the seriousness of the misconduct. That was not warranted. The consistent view of this Court is that in the absence of a finding that the punishment was shockingly disproportionate to the gravity of the charge established, the Labour Court should not interfere with the punishment. We, therefore, hold that the punishment of dismissal did not call for interference.

Re : Question (iv)

28. It is true that when the employer challenged the award of the labour court and sought stay of the award, the High Court only stayed the order dated 29.6.1983 in regard to the back-wages but did not stay the award dated 08.3.1983 directing reinstatement; and that if he had been reinstated in 1983, he would have served till 31.3.1991 when he attained the age of superannuation. The learned counsel for the employee made a submission before the High Court at the final hearing that in spite of the award directing reinstatement not being stayed, he was not reinstated. On the said submission, the High Court held that the employer had wilfully violated the lawful order and was not entitled to exercise of equitable discretion under Article 226/227.Firstly, the assumption that there was a lawful order or that there was wilful violation thereof is not sound. Further, the employer was not given an opportunity to explain why the employee was not reinstated. In fact, the contention of employer is that the first respondent did not report back to service, even though it was ready to reinstate him subject to final decision. Be that as it may. The mere fact that the first respondent was not reinstated in pursuance of the award of the Labour Court cannot result in dismissal of the writ petition challenging the award.

Conclusion :

29. In view of the above, we allow this appeal, set aside the order dated 28.7.2003 of the High Court as also the award dated 08.3.1983 (as modified on 29.6.1983) of the Labour Court and uphold the punishment of dismissal imposed upon the first Respondent. Parties to bear their respective costs.

Judgment Referred.

[1]*(1966) 3 SCR 0099*
[2]*(1970) 1SCR 0035*
[3]*(2006) 1 SCC 0380*
[4]*(1979) 2 SCC 0080*
[5] *(1981) 1 SCR 0789*
[6]*(1981) 3 SCC 0225*
[7]*(1969) 3 SCC 0653*
[8]*(1969) 3 SCC 0513*
[9]*(2006) 1 SCC 0479*
[10]*(2005) 5 SCC 0124*
[11]*(2005) 2 SCC 0363*
[12]*(2005) 5 SCC 0591*
[13]*(2003) 2 SCC 0212*
[14]*(2005) (6) SCC 0036*
[15]*(2005) 7 SCC 0406*
[16] *AIR 1982(SC) 0952*
[17]*(2006) 1 SCC 0430*
[18]*2005) 3 SCC 0134*
[19]*(1960) 1 LLJ 0518*
[20]*(1996) 6 SCC 0590*
[21]*(2000) 3 SCC 0324*
[22]*(2005) 2 SCC 0489*
[23]*(2005) 3 SCC 0401*
[24] *(2002) 1 LLJ 0234*