BHARAT FORGE CO. LTD. A

v.

UTTAM MANOHAR NAKATE

JANUARY 18, 2005

[N. SANTOSH HEGDE AND S.B. SINHA, JJ.] B

Labour Laws:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971—Schedule IV Item 1(a),(b),(d), (f) and (g)— Misconduct of sleeping during duty hours—Domestic enquiry—Misconduct admitted by employee and proved—On previous occasions also found guilty of misconduct—Punishment of dismissal—Labour Court held the punishment disproportionate and directed reinstatement with back wages—Dismissal order approved by Industrial Tribunal and Single Judge of High Court—Division Bench of High Court held the punishment disproportionate and as such amounted to legal victimization and unfair labour practice under clause (a) of Item 1—Factual foundation for legal victimization not laid by employee— On appeal, held: In the facts of the case, punishment was not disproportionate or arbitrary—In absence of any plea of victimization and in absence of foundational fact in arriving at conclusion of legal victimization invoking of clause (a) by High Court was erroneous—Model Standing Order framed under the Industrial Employment (Standing Orders) Act, 1946—Standing Order 24(1). C D E

Industrial Courts—Jurisdiction—Scope of—Industrial Courts would not sit in appeal over the decision of the employer unless there exists statutory provision in that behalf. F

Respondent was employed with appellant-Company. Disciplinary proceeding was initiated against him under Standing Order 24(1) of Model Standing Order framed under the Industrial Employment (Standing Orders) Act, 1946, as he was found asleep during duty hours. The act of misconduct was admitted by him. Domestic enquiry was held. He was found guilty and was dismissed. On earlier three occasions also he was found guilty of misconduct wherein only minor punishment was imposed. He filed complaint under item 1(a), (b), (d), (f) and (g)of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair G

 H

A Labour Practices Act, 1971. Labour Court held that domestic enquiry against the respondent was fair and proper and the finding recorded by the Enquiry Officer was not perverse. However, it held that the punishment was harsh and disproportionate and directed reinstatement with 50% back wages. Respondent as well as appellant filed revision application. Industrial Tribunal while allowing the application of appellant B and dismissing that of the respondent held that in case of proved misconduct, question of victimization does not arise. Writ Petition of respondent was dismissed by Single Judge of High Court. His Letters Patent Appeal was allowed by the Division Bench holding that though respondent was guilty of major misconduct, his punishment was C disproportionate and as such the same amounted to legal victimization and employer was guilty of having engaged in an unfair labour practice under clause (a) of Item 1 of Schedule IV. However, it directed payment of a sum instead of reinstatement.

In appeal to this Court, appellant contended that in case of proved D misconduct, question of victimization did not arise; that respondent had prevaricated his stand from Court to Court inasmuch as in Industrial Court he invoked clause (g) of Item (1) of Schedule IV, before Single Judge invoked clause (b) thereof but Division Bench, passed judgment invoking clause (a) although no foundational fact was pleaded in support thereof.

E Allowing the appeal, the Court

HELD: 1.1. In the facts and circumstances of the case and having regard to the past conduct of the Respondent as also his conduct during the domestic enquiry proceedings, it cannot be said that the quantum of F punishment imposed upon the Respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary. [558-G-H]

1.2. All the courts have answered the question as regards commission of misconduct by the Respondent in one voice. The Labour Court evidently had taken recourse to Clause (g) of Item 1 of Schedule IV of Maharashtra G Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 which *ex facie* was inapplicable. The said provision clearly postulates two situations, namely, (i) the misconduct should be of minor or technical character, and (ii) the punishment is shockingly disproportionate without having any regard to the nature of the particular misconduct or the past record of service of the employee. The past record H of service, therefore, is a relevant factor for considering as to whether the

punishment imposed upon the delinquent employee is shockingly disproportionate or not. Before the Single Judge an attempt on the part of the Respondent to take recourse to Clause (b) of Item (I) of Schedule IV failed. It was obligatory on the part of the respondent to plead and prove the acts of victimization. He failed to do so. In absence of any plea of factual victimization and furthermore in absence of any foundational fact having been laid down for arriving at a conclusion of legal victimization the Division Bench committed a manifest error in invoking Clause (a) thereof. [557-D-F]

Messrs Bharat Iron Works **v.** *Bhagubhai Balubhai Patel and Ors.*, **[1976] 1 SCC 518, relied on.**

2. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground. [558-E]

Regional Manager, Rajasthan State Road Transport Corporation **v.** *Sohan Lal,* **[2004] 8 SCC 218, referred to.**

3. The Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four-corners thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other. [558-D]

4. A decision is an authority of what it decides and not what can logically be deduced therefrom. [557-G]

Cement Corporation of India Ltd. **v.** *Purya and Ors.*, **[2004] 8 SCC 270, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4399 of 2002.

From the Judgment and Order dated 21.12.2001 of the Bombay High Court in L.P.A. No. 150/95 in W.P. No. 6425 of 1987.

Makarand D. Adkar, S.D. Singh, Vijay Kumar, Rajiv Joshi and Anurag Kishore for the Appellant.

The Judgment of the Court was delivered by

A **S.B. SINHA, J.** The Respondent herein at all material times was working as a helper in the services of the Appellant. At or about 11.40 a.m., on 26.8.1983 while working in the first shift, he was found lying fast asleep on an iron plate at his working place, whereupon a disciplinary proceeding was initiated against him in terms of Standing Order 24(1) of the Model Standing Order framed under the Industrial Employment (Standing Orders) Act, 1946. In the said domestic enquiry he was found guilty whereupon by order dated 17.1.1984 he was dismissed from his services. It is not in dispute that on three earlier occasions also, the Respondent was found guilty of misconduct; but only some minor punishments had been imposed. Questioning the said order of dismissal dated 17.1.1984, the Respondent herein filed a complaint of unfair labour practice as specified under Item 1(a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'the Act) against the Appellant herein before the Labour Court, Pune.

In the said proceeding, two preliminary issues were framed, namely, (i) whether the enquiry was proper; and (ii) is the finding recorded by the enquiry officer perverse. The Labour Court by its order dated 21.5.1985 held that the domestic enquiry against the Respondent was fair and proper and the finding recorded by the enquiry officer was not perverse. He thereafter proceeded with the case on merits and in terms of its order dated 31.7.1985, the Labour Court held that the punishment of dismissal imposed upon the employee was harsh and disproportionate and no reasonable employer could impose such punishment for the proved misconduct. Consequently, the Appellant herein was directed to reinstate the Respondent on his original post with continuity of service with 50% of the back-wages for the period from 23.12.1983 till his reinstatement.

Aggrieved by and dissatisfied therewith both the parties herein preferred separate Revision Applications before the Industrial Tribunal. By a common judgment dated 12.6.1987, the Revision Application filed by the Appellant was allowed and that of the Respondent was dismissed. The Respondent thereupon filed a Writ Petition before the Bombay High Court and by reason of a judgment and order dated 9.2.1995, the said Writ Petition was dismissed by a learned Single Judge. A Letters Patent Appeal there-against was filed by the Respondent herein which by reason of the impugned judgment was allowed directing :

"(i) the judgment of the learned Single Judge dated 9th February

1995 and the order of the Industrial Court dated 12th June 1987 A
are quashed and set aside.

(ii) The order passed by the second labour court dated 31st July 1985 is modified by directing the employer to pay a sum of Rs.2,50,000/- to the employee within one month from today. In the event of failure to pay the said amount to the employee B within one month from today, the employer shall be liable to pay interest at the rate of 9 per cent per annum from today till such payment is made."

The Appellant is in Appeal before us questioning the aforementioned judgment. C

Despite service of notice, nobody has appeared on behalf of the Respondent.

Mr. M.D. Adkar, learned counsel appearing on behalf of the Appellant, assailing the judgment of the Division Bench of the High Court, brought to D our notice that in the domestic enquiry the Respondent herein took several adjournments and on the sixth day of hearing he went out of the room stating that he would come back for filing a medical certificate in support of his plea of adjourning the matter but did not come back; whereupon the domestic enquiry was held *ex parte*. The learned counsel would contend that the Respondent has accepted his misconduct and furthermore materials have been E brought on records to prove that he had committed misconduct earlier also and in that view of the matter, the Division Bench of the High Court went wrong in passing the impugned judgment. It was pointed out that as regard purported commission of unfair labour practice, the concerned workman prevaricated his stand from court to court inasmuch as whereas before the F Industrial Court he invoked clause (g) of Item (1) of Schedule IV of the Act; before the learned Single Judge, he invoked clause (b) of Item (1) thereof but the Division Bench of the High Court proceeded to pass the impugned judgment by invoking clause (a), although no foundational fact was pleaded in support thereof. Reliance placed by the High Court on *Colour-Chem Ltd.* v. *A.L. Alaspurkar and Ors.*, [1998] 3 SCC 192, Mr. Adkar would urge, was G misplaced as the said decision was rendered in the peculiar factual matrix obtaining therein.

The learned counsel placing reliance on *Messrs Bharat Iron Works* v. *Bhagubhai Balubhai Patel and Ors.*, [1976] 1 SCC 518 would submit that in H

A a case of proved misconduct, the question of victimization does not arise.

The said Act was enacted to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognized unions; to provide for declaring certain strikes and lock-outs as illegal
B **strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid. Section 26 of the Act**
C **defines 'unfair labour practices' to mean any of the practices listed in Schedules II, III and IV appended thereto. Schedule IV of the Act specifies general unfair labour practices on the part of the employers, the relevant clauses whereof are as under :**

"1. To discharge or dismiss employee

D

(a) by way of victimization;

(b) not in good faith, but in colourable exercise of employer's right;

(g) for misconduct of a minor or technical character, without
E having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment;"

Section 27 of the Act provides that, inter alia, no employer shall engage in any unfair labour practice. Section 28 provides for dealing with complaints
F relating to unfair labour practices. The court upon receipt of a complaint is invested with power to cause an investigation to be made and on submissions of report by the Investigation Officer and in the event no settlement is arrived at during investigation, the court may proceed to consider the complaint and give its decision. Section 59 of the Act bars proceedings under the Bombay or Central Act.

G

The jurisdiction of a Labour Court was, therefore, confined to make an enquiry and pass an order thereupon as to whether the Appellant herein had committed an act of unfair labour practice within the meaning of Section 26 read with the relevant provisions of Item 1 of Schedule IV of the Act.

H Before we proceed to determine the merit of the decision rendered by

the Division Bench, it is useful to notice that the act of misconduct committed by the Respondent was admitted by him in terms of his letter dated 26.8.1983 stating :

> "I, Uttam Manohar Nakate, No.3638, age 37, being present give statement such as :-
>
> I have been working with Bharat Forge Company for 14 years. Earlier I used to work in Cranckshop for last 6 years. I have been working in Production Development Department.
>
> From 28.8.1983 I have been working first shift and I have been regular in first shift. Today on 26.8.1983 I came to work at 7:00 and as usual I was working. At about 11:15 to 11:30 I suffered stomach ache while pushing trolly. I told my partner Mr. A.G. Mistry that I would take some rest and accordingly I slept on the iron plate. At about 11:40 security officer Shri Dashputre and Shri Kelkar woke me up. Our supervisor Mr. Narkar was there. I did not ask permission from Mr. Narkar. Secondly our lunch interval was about to start and therefore, I was to work in the lunch interval therefore, I took rest before hand.
>
> Only because I suffered ache I took rest. Please forgive for one time.
>
> I read my statement and I state that it is correct."

It is also pertinent to note that the Enquiry Officer in his report categorically stated as to how the Respondent had been conducting himself during the domestic enquiry proceeding observing :

> "On 24.9.1983 Mr. Nakate sent an application along with Private Doctor's certificate submitting that he was sick as well as he was mentally disturbed. On this application I wrote the next date of enquiry as 25.9.1983. On 25.9.1983, Mr. Nakate was present and submitted that he was not feeling well therefore he was unable to attend the enquiry. When I asked him he told me that he had not come for attending the enquiry. The certificate was in his vehicle and he had come only for asking the adjournment. Mr. Sagade submitted that though Mr. Nakate is covered under ESI Scheme I have accepted the Private Doctor's certificate at Ex. 7. Mr. Nakate should have brought ESI Doctor's certificate for his sickness. The company does not accept

A the Private Doctor's certificate. Considering the sequence of the incidence Mr. Sagade further stated that Mr. Nakate was deliberately advancing some or the other reasons to dodge the enquiry. He further stated that if Mr. Nakate was not feeling well he could have sent ESI certificate for his sickness on 24.9.1983 onwards. However he has done so. I directed Mr. Nakate to go and get the certificate which B according to him was in his vehicle. Accordingly Mr. Nakate went out of cabin. After about 10-15 minutes he came back and submitted an application at Ex. 8 stating that as he was mentally disturbed and he was not feeling well the enquiry be adjourned for 8 days. I again and again questioned him about the certificate for which he had gone. C Mr. Nakate did not give me any reply regarding the certificate. He was again and again saying only one thing that he should be given time. Because of this I came to the conclusion that no certificate was kept in the vehicle of Mr. Nakate and the reason mental disturbance advanced by Mr. Nakate was only to avoid the enquiry. Therefore, I rejected the application for the adjournment . Therefore, I asked Mr. D Nakate about his representative. Mr. Nakate submitted that his representative was waiting at the Gate No.1 of the Company. I directed Mr. Sagade to send for Mr. Salvi who was standing at the Gate No.1. Mr. Nakate in the meantime told me that the enquiry papers are with Mr. Salvi. Mr. Kelkar the Security Officer submitted his report at E Ex.9 that there is no person by name Mr. Datta Salvi at gate No.1. I once again asked Mr. Nakate about his representative and instead of reply he started saying that he had severe stomach-ache and stated that he was not willing to say anything and asked for adjournment. I rejected this request also as since beginning of enquiry on 25.9.1983 Mr. Nakate was deliberately advancing one after another false reasons F to get the adjournment. I specifically told Mr. Nakate that the enquiry would be conducted ex parte if he does not participate. Mr. Nakate left the place of enquiry without saying anything. I therefore decided to conduct the enquiry ex parte and directed Mr. Sagade to adduce the evidence on behalf of the company."

G The Labour Court, as noticed hereinbefore, in its order dated 21.5.1985 held that the enquiry was proper and the finding of the Enquiry Officer was not perverse. The learned Labour Court, however, in its order dated 31.7.1985 passed an order of reinstatement with 50% back-wages holding :

H "...Obviously, this lapse on his part does not show that at any

point of time he indulged in gross misconduct which affected adversely to the interest of the respondent company. In the case at hand, the charges regarding sleeping during duty hours, no doubt, appear to be grave and serious nature and such sort of tendencies cannot be appreciated and they deserve to be curbed with heavy hands. If such misconducts are viewed with leniency, it will have adverse effect on the peace and tranquility of the peaceful functioning of the company, but, in the instant case, we cannot adopt this harsh view. It is because the length of service of the complainant is of longer period of 10 years and for one lapse of this nature it is not proper to sack him from the services. I think, therefore, by imposing lesser punishment it would be better if one more chance is given to him to serve the respondent company. Viewed from this angle, I think, the punishment of removal imposed upon him by the respondent is absolutely harsh and disproportionate and no any reasonable employer would impose such punishment in such circumstances."

No sufficient or cogent reason, in our opinion, was assigned by the learned Labour Court as to why a lenient view should be taken. The Revisional Court while allowing the Revision Application of the Appellant and dismissing the Revision Application of the Respondent came to the conclusion that as the misconduct has been proved and relying on the decision of this Court in *Bhagubhai Balubhai Patel* (supra) where it was opined that a proved misconduct is anti thesis of victimization in the industrial relations; held :

"Therefore, in granting the relief of reduction of the nature of punishment, the learned judge of the Labour Court exceeded his jurisdiction and committed an error, apparent on the face of the record.. In any event, since the learned Labour Judge has found that the misconduct of sleeping during duty hours, was grave and serious, and such tendencies deserved to be curbed with heavy hands and since he had accepted the position of the past record of the Respondent, the length of ten years of his service, hardly constituted any mitigating circumstances. In fact, the Respondent had been given sufficient opportunity to improve himself. In these circumstances, the learned Labour Judge was wholly unjustified in interfering with the punishment. It is material to note that he has no where found that the punishment was shockingly disproportionate."

The said order of the Revisional Authority was upheld by the learned

A Single Judge of the High Court stating :

> "That sleeping in duty is a serious misconduct, which ought not to be overlooked and showing leniency in such a matter was likely to have a deleterious effect on discipline in the factory, are findings which the Labour Court has itself arrived at. As to quantum of punishment, B the First Respondent-employer was required to consider the past record and other attendant circumstances. The past record had two aspects, its length of 10 years and it is being dotted with previous actions for misconduct. To over emphasis the length of the service to the detriment of previous disciplinary action, is discounting quality as against C quantity."

The Division Bench of the High Court also found commission of major misconduct on the part of the Respondent but proceeded to examine the question as to whether despite such proved misconduct the punishment awarded by the employer on him was grossly disproportionate and would be D an unfair labour practice being an instance of legal victimization under clause (1) of Item 1 of Schedule IV of the Act. Relying on or on the basis of *Colour-Chem Ltd.* (supra), the Division Bench held :

> "....The question that arises for our consideration is whether looking to the nature of the proved charge that the employee was found E sleeping during duty hours and was awakened by the security officer, can it be said that the punishment of dismissal is shockingly or grossly disproportionate. If the answer is in affirmative obviously, such punishment could be treated as legal victimization and employer would be guilty of having engaged in an unfair labour practice under clause F (a) of Item 1 of Schedule IV"

Upon taking into consideration the gravity of past misconduct, it was observed :

> ".....We find that looking to the nature of the charge, i.e. the employee G was found sleeping during duty hours, the employee could not have been inflicted with the punishment of dismissal. The past record which has been referred to hereinabove and the misconduct proved did not justify the punishment of dismissal as no reasonable employer would ever impose the punishment of dismissal in such circumstances"

H The Division Bench, however, in stead and place of passing an order

of reinstatement upon taking into consideration the fact that he was out of the job for about 15 years and hardly 5-6 years' job is left, directed payment of a sum of Rs. 2,50,000 to the Respondent.

Colour-Chem Ltd. (supra) whereupon strong reliance has been placed by the Division Bench of the High Court is an authority for the proposition that Clause (g) of Item 1 of Schedule IV of the Act is relatable to a minor or technical misconduct which in a given set of cases may amount to resulting in a shockingly disproportionate punishment if they are followed by discharge or dismissal of the delinquent. This Court therein, however, referring to dictionary meaning observed that the term "victimization" is of comprehensive import. It may be victimization in fact or in law. As regard factual victimization it was observed that it may consist of diverse acts of employers who are out to drive out and punish an employee for no real reason and for extraneous reasons. It further proceeded to observe :

> "There can be in addition legal victimization and it is this type of victimization which is contemplated by the decision of this Court in Hind Construction [1965] 2 SCR 85. It must, therefore, be held that if the punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to be the particular major misconduct and the past service record of the delinquent or is such as no reasonable employer could every impose in like circumstances, it would be unfair labour practice by itself being an instance of victimization, in law or legal victimization independent of factual victimization, if any. Such an unfair labour practice is covered by the present Act by enactment of clause (a) of Item 1 of Schedule IV of the Act as it would be an act of victimization in law as clearly ruled by this Court in the aforesaid decision"

In that case the Respondents therein were punished although ten other mazdoors who were also found to be sleeping were let off. This Court noticed that the Respondents therein were although assigned more responsible duties as compared to the mazdoors but in the background of the surrounding circumstances and especially in the light of their past service record there was no escape from the conclusion that the punishment of dismissal imposed on them for such misconduct was grossly and shockingly disproportionate.

Cholour-Chem Ltd. (supra) was, thus, rendered in the fact situation obtaining therein. It is not an authority for the proposition that in a case where an employee is found to be sleeping during working hours, imposition

of punishment of dismissal, despite his past bad records must be held to be disproportionate to the act of misconduct.

In the instant case although victimization has been taken to be a ground of complaint, no factual foundation therefor was laid and it was confined to quoting only the legal provisions. No plea of legal victimization was also taken in the complaint petition.

A bench of this Court in *U.P. State Road Transport Corporation* v. *Mohan Lal Gupta and Ors.*, [2000] 9 SCC 521, opined :

> "The learned advocate appearing in support of the appeal mainly contended on two counts. On the first, it has been very strenuously contended as to whether the Labour Court can alter the punishment awarded to Respondent 1 workman upon recording a finding that the charges have duly been proved and secondly, it has been contended as to whether the employee who has admittedly misappropriated the property of the employer Corporation can be allowed to be retained in service.
>
> These two issues are undoubtedly of some importance. The workman concerned during the course of inquiry in no uncertain terms admitted his guilt though however he has stated that the same amounted to mere negligence and not a deliberate act. But the Labour Court being the fact finding court came to the conclusion that the charges stood proved and we are not in a position to reassess the factual situation at this stage of the proceedings under Article 136 of the Constitution. The finding as regards the proof of charges shall have to be taken as accepted and we do not see any perversity therein having regard to the state of facts more so by reason of acceptance of charge by the delinquent employee."

Yet again in *U.P. State Road Transport Corpn.* v. *Subhash Chandra Sharma and Ors.*, [2000] 3 SCC 324, upon noticing *Colour-Chem Ltd.*, (supra), this Court observed :

> "The charge against the respondent was that he, in a drunken state, along with the 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 the 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 a miscarriage of justice." A B C

Each case, therefore, has to be decided on its own facts.

We have noticed hereinbefore that all the courts have answered the question as regard commission of misconduct by the Respondent in one voice. The Labour Court evidently had taken recourse to Clause (g) of Item 1 of Schedule IV of the Act which ex facie was inapplicable. The said provision clearly postulates two situations, namely, (i) the misconduct should be of minor or technical character; and (ii) the punishment is a shockingly disproportionate without having any regard to the nature of the particular misconduct or the past record of service of the employee. The past record of service, therefore, is a relevant factor for considering as to whether the punishment imposed upon the delinquent employee is shockingly disproportionate or not. As has been noticed hereinbefore, before the learned Single Judge an attempt on the part of the Respondent to take recourse to Clause (b) of Item (1) of Schedule IV failed. In absence of any plea of factual victimization and furthermore in absence of any foundational fact having been laid down for arriving at a conclusion of the legal victimization, in our opinion, the Division Bench committed a manifest error in invoking Clause (a) thereof. D E F

The Division Bench, thus, was not correct in relying on *Colour-Chem Ltd.* (supra) and failed to notice the distinguishing features thereof. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom. [See *Cement Corporation of India Ltd.*, **v.** *Purya and Ors.*, [2004] 8 SCC 270. G

In *Bhagubhai Balubhai Patel* **(supra), this Court observed :**

H

A "In such a case the employee, found guilty, cannot be equated with a victim or a scapegoat and the plea of victimization as a defence will fall flat. This is why once, in the opinion of the tribunal a gross misconduct is established, as required, on legal evidence either in a fairly conducted domestic enquiry or before the tribunal on merits, the plea of victimization will not carry the case of the employee any B further. A proved misconduct is antithesis of victimization as understood in industrial relations. This is not to say that the tribunal has no jurisdiction to interfere with an order of dismissal on proof of victimization."

C It was, therefore, obligatory on the part of the Respondent to plead and prove the acts of victimization. He failed to do so.

Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four-corner thereof. The Industrial Courts would not sit in appeal over the D decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.

If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and E certainly not on a compassionate ground.

In Regional Manager, Rajasthan State Road Transport Corporation v. *Sohan Lal,* [2004] 8 SCC 218, it has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the F case herein. In the facts and circumstances of the case and having regard to the past conduct of the Respondent as also his conduct during the domestic enquiry proceeding, we cannot say that the quantum of punishment imposed upon the Respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary.

G For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The Appeal is allowed. However, there shall be no order as to costs.

K.K.T. Appeal allowed.