CASE NO.:
Appeal (civil) 6200 of 2004

PETITIONER:
Life Insurance Corporation of India

RESPONDENT:
R. Dhandapani

DATE OF JUDGMENT: 25/11/2005

BENCH:
ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

The Life Insurance Corporation of India (in short the 'LIC') calls in question legality of the judgment rendered by a Division bench of the Madras High Court, in a writ appeal filed under Clause 15 of the Letters Patent holding that even if the penalty of removal from service is held to be in order, the respondent-employee nevertheless would be entitled to pension to which he would be entitled "but for his removal".

Background facts in a nutshell are as under:

Respondent was employed as an Assistant in the LIC in the year, 1962. He worked in the Coimbatore Branch of the LIC from 1967 onwards. Prior to that he had worked at Erode for a period of 2 years i.e. from 1965 to 1967. On 14.12.1983 he was transferred to Attur and therefore relieved from the Coimbatore Branch. However, the respondent did not join duty at Attur and sought for privileged leave. Thereafter he claimed leave on medical grounds. He did not appear before the doctor designated by the LIC to substantiate his claim of leave on medical grounds. Thereafter he continued to remain absent till the time the charge sheet was issued to him on 16.8.1984. As the period of absence from duty was about 233 days, LIC asked the respondent to appear before the doctor designated by it pursuant to the powers under applicable Regulation 30(8) of LIC which inter alia provided that in the case of sickness or accident an employee shall not absent himself without submitting "a medical certificate satisfactory to the competent authority". He failed to do so. After the charge sheet setting out his misconduct of disobedience to lawful order, insubordination and unauthorized absence from duty was issued, he submitted a reply but did not take part in the enquiry by asserting that no enquiry was needed. The enquiry officer after completing the enquiry found the charges levelled against the employee had been proved. The disciplinary authority after taking note of that report held that in view of charge of insubordination and disobedience which were charges of serious nature and which had been proved, it was not in the interest of the appellant - LIC to continue him in service and directed his removal from

service. Respondent raised an industrial dispute under the Industrial Disputes Act, 1947 (in short the 'Act') before the Industrial Tribunal, Madras. In the counter affidavit to the claim made by the respondent, the past conduct of the respondent-employee was highlighted and it was pointed out that he had been issued charge sheets earlier in a span of 6 years on seven occasions. It was also pointed out that he had been penalised pursuant to the charge sheets on more than one occasion. The Industrial Tribunal after examining the claim and the counter and the records of enquiry concluded that the enquiry had been properly held, the respondent was stubborn and adamant and there was not justifiable reason for not reporting for duty to Attur. Tribunal held that even in spite of all the lapses highlighted, punishment of removal from service was harsh. Instead of imposing of any specific punishment, directions were given that the workman was to be deprived of three fourth of the back wages from 17.12.1983 (the date when he was relieved on transfer) till 15.4.1987 (date of reference) and order for reinstatement in service with full back wages from 16.4.1987 and all other benefits including continuity of service.

A writ petition was filed by LIC before the High Court. A learned Single Judge dismissed it. Thereafter the Letters Patent Appeal was filed. Stand of LIC before the Division Bench was that in view of the provisions of Section 11-A of the Act it was not open for the Industrial Tribunal, however wide the provision may be construed, to substitute its view solely on the ground that it felt that the penalty was excessive without demonstrating as to how the penalty which had been imposed was grossly disproportionate. Reliance was placed on the decision of this Court in CMC Hospital Employees' Union v. CMC Vellore Association (1987 (4) SCC 691)

The High Court held that on the facts of the case, the conduct of the respondent disclosed gross disobedience and the proved misconduct was one of deliberate disobedience to the orders of the superiors compounded by adamant attitude in remaining absent for a period of 233 days. He did not even appear before the doctor which the employer had required him to do. The Appeal was therefore allowed and the Award of the Tribunal directing reinstatement with back wages was set aside. After doing so, the High Court granted some reliefs which form the subject matter of challenge in this Appeal. The reliefs granted are contained in Paragraphs 20 and 21 of the impugned order which read as follows :

"20: The employee had put in twenty two years of service before he was removed. We do not think that it is just to deprive of the benefit of those twenty two years of service and permit the employer to withhold from him the pension which he was, but for his removal, qualified to receive on the basis of his service. In the circumstances, we feel it appropriate and just to direct the employer to grant him the pension for the period of service that he had put in before his removal. The employer shall make the necessary computation and shall disburse the amount due to him as early as possible.

21. During the pendency of the matter in this Court, the employee had been paid his last drawn wages under Section 17 B of the I.D. Act. The respondent shall not be liable to refund all or any of the sums so received by him."

Learned counsel for the appellant submitted that the High Court was not justified in granting the relief as noted above after having found the conduct of the respondent to be obnoxious and holding that his acts amounted to gross insubordination. It was pointed out after coming into force of Life Insurance Corporation of India (Employees) Pension Rules, 1995 (in short the 'Pension Rules') as notified by the Central Government, the employees who retired after 1986 were alone eligible for pension. Under the said Rules, for the employees who had retired prior to 1.1.1986 and were living as on 1.11.1997 a scheme was framed for grant of ex-gratia relief. Such ex-gratia amount was to be paid from 1.11.1997 at a specified monthly rate with dearness relief etc. The said scheme for ex-gratia relief specifically provided that the same was not applicable to those who were removed, dismissed or terminated from service of the Corporation and those who had resigned from the Corporation or to those who are on daily wage employment of the Corporation. Therefore the High Court could not have granted relief of proportionate pension since the question of payment of pension to the respondent would not arise as he was removed from service on 25.3.1985.

In response, learned counsel for the respondent submitted that certain calculations were filed by the appellant before the High Court indicating as to what would be the amount of pension payable and the same was filed during the course of hearing of a review application. It was, therefore, submitted that there was implied acceptance of the direction and the question whether the Pension Rules will apply or not, did not arise.

Learned counsel for the appellant by way of reply submitted that the calculations on which reliance is placed by the respondent was to show to the High Court, the quantum of pension that would have been payable if the High Court's directions were to be implemented and it did not come in the way of appellant challenging that part of the order, in regard to which it had a grievance.

It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11- A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A 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 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.

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 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 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 11-A, 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 substance 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.

In the aforesaid background the Division Bench of the High Court was wholly unjustified in giving directions contained in paragraph 20 of its order, having set aside the award of the Tribunal as affirmed by learned Single Judge. The High Court has not even indicated as to under what provision of law and/or statutory enactment or Regulation or Scheme, pension was payable to the respondent. On the contrary, the Pension Rules and the Scheme referred to above clearly justified the stand of the appellant that the respondent was not entitled to receive any pension or benefit under the scheme.

However direction given in Para 21 relating to payment under Section 17-B of the Act needs no interference.

The appeal is accordingly allowed in part and we set aside the directions contained in para 20 of the order of the Division Bench of the High Court. Costs made easy.