

PETITIONER:

U.P. STATE ROAD TRANSPORT CORPORATION

Vs.

RESPONDENT:

SUBHASH CHANDRA SHARMA & ORS.

DATE OF JUDGMENT: 15/03/2000

BENCH:

S.S.Ahmad, D.P.Wadha

JUDGMENT:

S. SAGHIR AHMAD, J. Leave granted. Respondent No. 1, [hereinafter referred to as 'Respondent'], who was a driver in the U.P. State Road Transport Corporation (appellant), was charge-sheeted on 16.8.1989 for disciplinary proceedings. Three charges were indicated in the charge-sheet. The first charge related to his habitual absence from duty for the period June, 1988 to May, 1989, regarding which he also did not submit the mileage form. The second charge was that on 19th May, 1989, when he reached Badaun at about 9 P.M. with Bus No. 8680, he informed the Conductor, Dinesh Kumar, that the bus had developed some defects and, therefore, he parked the bus in Badaun workshop. Dinesh Kumar, Conductor, went to sleep in another bus, but when he woke up in the morning he found that the Bus was taken by Respondent to Bareilly, regarding which an information was also given by Dinesh Kumar to the Station Incharge, Badaun. The Bus was also seen coming back from Bareilly. It was noticed that in order to cover up his act of taking the Bus to Bareilly, the Respondent got a remark entered in his duty form by Rampal, Vulcanizer of Badaun Depot, about the defect in the Bus. The third and last charge against the Respondent was that on 24th May, 1980 at about 8.30 PM, he, along with Shiv Kumar Sharma, Conductor, went to Ramesh Chandra, Assistant Cashier, in the cash room in a drunken state. He demanded money from Ramesh Chandra and when the latter refused, the Respondent abused and threatened to assault him, which was treated as an act of misconduct. The charges were enquired into by Shri S.C. Jain, a retired District Judge, who was appointed as the Enquiry Officer. The Enquiry Officer submitted the Report on 21st September, 1990, in which he found that the charge about habitual absence was not proved against the Respondent. The other charge relating to taking the Bus to Bareilly was also not established, but it was established that he had taken out the Bus unauthorisedly from Badaun workshop to some place without taking the Conductor in the Bus. The third charge of misconduct was found fully established. Thereafter, a show cause notice was issued to the Respondent on 12th August, 1991, and by order dated 31st August, 1991, he was removed from service. On an industrial dispute being raised by Respondent, a reference was made on 31st March, 1993 to the Labour Court for adjudication. The Labour Court, by its award dated 6th December, 1996, came to the conclusion that though the departmental enquiry did not suffer from any infirmity, the punishment of 'removal' was excessive. It consequently set aside the order of removal and substituted the punishment of removal by the punishment

of stoppage of one wage increment and payment of 50% of the back-wages. The award was challenged by the appellant before the High Court in a writ petition which was dismissed summarily on 27th April, 1998. Learned counsel appearing for the appellant has contended that once it was found by the Labour Court that the departmental enquiry conducted against the Respondent was proper and it did not suffer from any infirmity, it was not open to it to interfere with the quantum of punishment. It is contended that the High Court should have, on that ground, set aside the award and maintained the order of removal passed against the Respondent. Whether it is open to Industrial Tribunal or Labour Court or the High Court to interfere with the quantum of punishment is, no longer, *res integra*, as the question has been answered by this Court several times in its various decisions. In *Union of India & Anr. vs. B.C. Chaturvedi* [1995] 6 SCC 750, a 3-Judge Bench of this Court has held that Section 11-A of the Industrial Disputes Act, 1947 confers power on Industrial Tribunal/Labour Court to apply its mind on the question of proportion of punishment or penalty. It was held that this power is also available to High Court under Article 226 of the Constitution, though it was qualified with a limitation that while seized with this question as a writ court, interference is permissible only when the punishment/penalty is shockingly disproportionate. Again, a 3-Judge Bench of this Court in *Colour-Chem Ltd. vs. A.L. Alaspurkar & Ors.* [1998] 3 SCC 192, relying upon an earlier decision in *Hind Construction & Engineering Co. Ltd. v. Workmen* AIR 1965 SC 917 = [1965] 2 SCR 85 = [1965] 1 LLJ 462, laid down as under : "Consequently it must be held that when looking to the nature of charge of even major misconduct which is found proved if the punishment of dismissal or discharge as imposed is found to be grossly disproportionate in the light of the nature of the misconduct or the past record of the employee concerned involved in the misconduct or is such which no reasonable employer would ever impose in like circumstances, inflicting of such punishment itself could be treated as legal victimisation." Section 11A of the Industrial Disputes Act provides as under:- "11A. Powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen -- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the material on record and shall not take any fresh evidence in relation to the matter." This Section, as interpreted by this Court, no doubt, vests the Labour Court with discretion to substitute the order of discharge or dismissal of a workman into an order of reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. In the present case,

the following industrial dispute was referred to the Labour Court for adjudication: "Whether the termination of the service of their workman Sh. Subhash Chandra Sharma S/o Shri Nathimal, driver by the employer by order dt. 31.08.1991 is proper and legal? If not, what is the relief (with details) to which the workman is entitled to?" 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. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and the award dated December 6, 1996 of the Labour Court. There shall, however, be no order as to costs.