

(25) The writ petition is allowed. The order of compulsory retirement of the petitioner is set-aside. The order rejecting the prayer of the petitioner for voluntary retirement is also set-aside. The prayer of the petitioner made for his voluntary retirement with effect from 29th August, 2003 shall stand allowed. The adverse remarks of integrity doubtful and the remarks endorsed in various columns of the report and the general remarks made are also quashed. The petitioner shall deposit the amount, which was found short and is required to make up the requirement of shortfall in the notice period, if he has not already so deposited. The amount received by the petitioner from the respondents in lieu of three months' notice i.e. a sum of Rs. 71,975 shall be refunded by the petitioner within a period of two week from the date of receipt of the copy of this order. The respondents would be at liberty to calculate the amount, which the petitioner is required to deposit to give effect to his prayer for voluntary retirement and in case any amount is required to be deposited, the petitioner would do so. The petitioner shall be deemed to have voluntarily retired from service with effect from 29th August, 2003. The necessary consequence would follow.

R.N.R.

Before Augustine George Masih, J

**HARYANA ROADWAYS ENGINEERING CORPORATION,
BEHRAMPUR ROAD, KHANDS, GURGAON (HARYANA)
THROUGH ITS GENERAL MANAGER—*Petitioner***

versus

**INDUSTRIAL TRIBUNAL-CUM-LABOUR, COURT-I
(PRESIDING OFFICER), GURGAON
AND ANOTHER,—*Respondents***

C.W.P. No. 16364 of 2008

14th May, 2009

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S.11-A—Charges of theft against workman proved—Termination after consideration of reply of workman—Appeal rejected—Industrial dispute—Labour Court finding inquiry conducted by Enquiry Officer in accordance with principles of natural justice—Labour Court by invoking its powers u/s 11-A

HARYANA ROADWAYS ENGINEERING CORPORATION, BEHRAMPUR 307 ROAD, KHANDS, GURGAON (HARYANA) THROUGH ITS GENERAL MANAGER v. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I (PRESIDING OFFICER), GERGAON AND ANOTHER (*Augustine George Masih, J.*)

reducing quantum of punishment awarded to workman—Acquittal in criminal case—No finding by Labour Court that departmental proceedings and criminal case were on same set of facts and same set of evidence—In absence of such finding solely on ground of acquittal in criminal case would not entitle workman right of reinstatement in service—Basic approach in departmental proceedings and criminal proceedings are totally different—Nature and standard of proof is different—Two proceedings cannot be equated with each other—Merely because workman acquitted in criminal case would not per se give justification to Labour Court to exercise its powers u/s 11-A—Observations by Labour Court with regard to unblemished record of workman prior to incident for which he had been punished after holding departmental inquiry is perverse and cannot be accepted—Petition allowed.

Held, that no employer would like to retain such an employee who is not trustworthy, is dishonest, is a thief and who keeps his personal interests and that too by dishonest intentions before the interest of the employer. The Labour Court is not supposed to nor is it expected to force such employees on his employer, if that is done, the Court would be paying dividend to such a selfish and dishonest employee. The Court cannot be a party to this misguided endeavour of the workman. In view of the above, the exercise of powers under Section 11-A of the Act by the Labour Court, cannot be sustained.

(Para 14)

Further held, that no finding has been recorded by the Labour Court that both the proceedings namely ; departmental proceedings and the criminal case, were on the same set of facts and same set of evidence, without there being any iota of difference. In the absence of such finding, solely on the ground of acquittal in the criminal case would not entitle the workman the right of reinstatement in service. It cannot be lost sight that the basic approach in the departmental proceedings and the criminal proceedings are totally different. The nature and purpose of the two proceedings are distinct and the result also is different and above all the nature and standard of proof is different. Therefore, two proceedings cannot be equated with each other as there is a clear drawn distinction between

the two. Therefore, merely because the workman in the present case stands acquitted in the criminal case would not per se give justification to the Labour Court to exercise its powers under Section 11-A of the Industrial Disputes Act. The observations as made by the Labour Court with regard to the unblemished record of the workman prior to the incident for which he had been punished after holding the departmental inquiry is perverse and cannot be accepted.

(Paras 16 & 17)

Naresh Prabhakar, Advocate, *for the petitioner.*

B.K. Bagri, Advocate, *for respondent No. 2.*

AUGUSTINE GEORGE MASIH, J :

(1) The present writ petition has been preferred by the petitioner-Corporation wherein it is impugning the award dated 12th May, 2008 (Annexure P-5), passed by the Industrial Tribunal-cum-Labour Court-I, Gurgaon,—*vide* which the Labour Court while exercising its powers under Section 11-A of the Industrial Disputes Act (hereinafter referred to as “the Act”) has substituted the order of termination to reinstatement in service of the respondent No. 2 workman as a Helper but without back wages.

(2) Kailash Chand, respondent No. 2, workman was appointed as a Helper by the petitioner-Corporation on 1st July, 1998 and thereafter appointed as a Assistant Carpenter on 1st May, 1992. A charge-sheet was issued to the respondent No. 2 workman on 13th November, 1995 in regard to a theft committed by him on the intervening night of 26th October, 1997 and 27th October, 1997. A regular departmental inquiry was held against the respondent No. 2—workman where the workman participated. The Enquiry Officer submitted his report dated 31st January, 1997, holding him guilty of the charges levelled against him. A show cause notice dated 4th February, 1997 was issued to the workman to which he filed a detailed reply. On consideration of the reply submitted by the respondent No. 2-workman, the order of termination dated 14th March, 1997 was passed by the appointing authority. The workman preferred an appeal before the State Transport Commissioner, Chandigarh, but the same was rejected on

HARYANA ROADWAYS ENGINEERING CORPORATION, BEHRAMPUR 309
ROAD, KHANDS, GURGAON (HARYANA) THROUGH ITS GENERAL
MANAGER v. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I (PRESIDING
OFFICER), GERGAON AND ANOTHER (*Augustine George Masih, J.*)

13th October, 1997. Thereafter, the workman raised an industrial dispute which was referred to the Labour Court. On the basis of the pleadings, the Labour Court was pleased to frame the following issues :—

1. Whether the management has conducted a fair and proper enquiry ? O.P.M.
2. Whether the termination of services of Kailash Chand is not justified and if so to what relief he is entitled to ? O.P.W.
3. Relief.

(3) Issue No. 1 was ordered by the Labour Court to be treated as preliminary issue and both the parties led their respective evidence and accordingly proceeded to decide issue No. 1,—*vide* its order dated 31st January, 2006, wherein the Labour Court came to the conclusion that the inquiry was conducted by the Enquiry Officer in accordance with principles of natural justice. The petitioner has admitted that the evidence of the management was recorded in his presence and he was offered full opportunity to cross-examine the witnesses of the petitioner-Corporation. The issue was, thus, decided in favour of the petitioner-Corporation, holding that the inquiry conducted was fair and proper. Thereafter, the Labour Court proceeded to decide issue No. 2,—*vide* its order dated 12th May, 2008 (Annexure P-5), wherein by exercising its powers under Section 11-A of the Act, the Labour Court had held the respondent No. 2, workman entitled to reinstatement in service as a Helper but without back wages. It has further held that the intervening period i.e. from the date of dismissal upto the date of award would be counted for the purpose of pensionary and other service benefits.

(4) The petitioner-Corporation has impugned the award passed by the Labour Court on the ground that the Labour Court has illegally invoked its powers under Section 11-A of the Act in favour of the respondent No. 2—workman, reducing the quantum of punishment awarded to him by the Management. He contends that the allegations against the respondent No. 2—workman was that he alongwith Krishan Kumar, Carpenter, while working in the Corporation, in the intervening night of 26th October, 1997 and 27th October, 1997, made an attempt to steal aluminum scrap. This charge stood proved in the departmental proceedings initiated against the

workman. Having lost faith on its employee and keeping in view the gravity of the mis-conduct, the services of the workman were terminated by the Management as per its wisdom. The Labour Court cannot exercise its powers under Section 11-A of the Act on some misplaced sympathy to reinstate a workman who had been found guilty by the Management causing financial loss to the employer. Mere acquittal in the criminal case would not entitle the workman to reinstatement in service. The Labour Court had gone wrong in holding that the charge levelled against the workman was not of moral turpitude. It has further been submitted that the observations of the Labour Court is factually wrong that except for the incident in question, with regard to the attempt to steal aluminum scrap, there is nothing on record to show that prior to this there was any act of commission or omission by the workman. It has been submitted that in the written statement, before the Labour Court, to the claim petition of the workman it was specifically stated that earlier also disciplinary action was initiated against the workman on 2nd November, 1995 where the allegation against him was of stealing one drill machine from the workshop. The workman in those disciplinary proceedings deposited the cost of drill machine amounting to Rs. 2520.33. This shows that earlier also the workman had indulged into the act of theft and thus the observations of the Labour Court is against the records. On this basis, it is submitted that the award deserves to be set aside.

(5) The workman on the other hand had in his written statement to the writ petition supported the award passed in his favour. The exercise of powers under Section 11-A of the Act by the Labour Court said to have been exercised in the peculiar facts and circumstances of the case as the Labour Court was satisfied that the termination of the workman was not justified. All three grounds which had been taken by the Labour Court for reinstating the workman while exercising its powers under Section 11-A of the Act have been reiterated. However, the fact regarding the action being initiated against him by the Management for theft of drill machine and deposit of cost of the drill machine amounting to Rs. 2520.33 has not been disputed by the workman.

(6) Counsel for the petitioner-Corporation in support of the submissions made by the Management as have been enumerated above has submitted that exercise of powers under Section 11-A of the Act is totally misplaced and contrary to the law laid down by Hon'ble the Supreme

Court. He submits that mere acquittal in the criminal case does not entitle the workman to reinstatement where departmental proceedings have been held against the workman, which was in accordance with law and the charges have been proved against him in the departmental proceedings, thus, the punishment meted out to him is justified. He submits that the standard of proof in the criminal trial and the departmental proceedings are different. It has nowhere come on records that the evidence which had been led by the Management in the departmental proceedings and the criminal trial were the same. No finding to this effect had been recorded by the Labour Court. Reliance has been placed by counsel for the petitioner on **Pandiyam Roadways Corporation Limited versus N. Balakrishnan, (1)**, in support of his this contention.

(7) He submits that second ground which has been taken by the Labour Court for exercising its power under Section 11-A of the Act is that the workman had an unblemished record of more than nine years except the incidence of theft for which was charged, this observation is contrary to the records as departmental action was taken against the workman for stealing the drill machine, cost of which was ultimately deposited by the workman with the Corporation. This fact having not been denied by the workman, the reason given by the Labour Court for exercising its powers under Section 11-A of the Act, stood vitiated.

(8) As regards the third ground which has been taken by the Labour Court for exercising its powers under Section 11-A of the Act is that the charges levelled against the workman was not of moral turpitude, also cannot be sustained as theft from the workshop where the employee is performing his duties, which would lead to financial loss to the Corporation would itself amount to mis-conduct which would fall under moral turpitude, the observations of the Labour Court is, therefore, un-called for and not sustainable. He submits that once grave charges of mis-conduct are attributed to the workman, which stood fully proved in the departmental proceedings which were also upheld by the Court and the said mis-conduct would have resulted in the financial loss of the Corporation, had he not been caught red handed while stealing the aluminum scrap, the Labour Court should not have interfered with the punishment of dismissal awarded by the disciplinary

authority. He relies upon the judgment of Hon'ble the Supreme Court in the case of **Divisional Controller, N.E.K.R.T.C. versus H. Amaresh, (2)**, and **Managing Director, North-East Karnataka Road Transport Corporation versus K. Murti, (3)**.

(9) On the other hand, counsel for the respondent No. 2, workman contended that the findings as recorded by the Labour Court are fully justified while exercising its powers under Section 11-A of the Act. Although, the departmental proceedings have been held against the workman has been approved by the Labour Court to be in accordance with law but still where the Labour Court is of the opinion that the punishment granted to the workman is disproportionate to the charges proved against the workman, the Labour Court can substitute the punishment. In the present case, justifiable reasons have been given by the Labour Court for exercising its powers under Section 11-A of the Act which do not call for any interference by this Court.

(10) I have heard counsel for the parties and have gone through the records of the case.

(11) The powers under Section 11-A of the Act are no doubt discretionary in nature but the Labour Court is required to exercise this discretion in a judicious manner. It cannot be at the whims and fancies of the Labour Court that the powers under Section 11-A of the Act, which are extraordinary, need to be invoked and put to use. The nature of allegations, the proof of charges in the departmental proceedings and the effect thereof also has to be kept in mind by the Labour Court while exercising its discretionary powers. The purpose and intend of the Industrial Disputes Act i.e. to maintain industrial peace and harmony, is required to be kept in mind where the allegations against the employee are serious and on being proved in the departmental proceedings, the employer loses his confidence, faith and trust on its employee, the Labour Court should not by exercising its powers under this Section force an employee on the Management. Great care and caution has to be exercised by the Labour Court while invoking this discretionary power.

(2) 2006 (6) S.C.C. 187

(3) 2006 (12) S.C.C. 570

HARYANA ROADWAYS ENGINEERING CORPORATION, BEHRAMPUR 313
ROAD, KHANDS, GURGAON (HARYANA) THROUGH ITS GENERAL
MANAGER v. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I (PRESIDING
OFFICER), GERGAON AND ANOTHER (*Augustine George Masih, J.*)

(12) In the present case, as is apparent from the facts as has been discussed above, there are serious allegations against the workman with regard to attempt by him to steal aluminum scrap from the workshop where he was performing his duties. The said charges stood proved in the departmental proceedings initiated against him. The said departmental proceedings have been found by the Labour Court;—*vide* its order dated 31st January, 2006 to be fair and proper. The action, therefore, terminating the services of the workman was also in accordance with law.

(13) The only question, therefore, left which the Labour Court could have examined was with regard to order being justified or not. It has been time and again held by various Courts that the Labour Court should exercise its powers under Section 11-A of the Act sparingly and that too where the punishment granted to the workman is shockingly disproportionate to the charges proved against the workman or where the conscious of the Court is pricked by imposition of the punishment and where no reasonable person would have imposed such a punishment for the charges proved against delinquent workman.

(14) The present case is not of such a nature where the punishment meted out to the workman could be termed as shockingly disproportionate to the proved charges against the workman. A workman who at his workplace is entrusted with the material to perform his duty by the Management is expected to take good care of the same. The employee is required to work for the benefit of the employer and if he tries to steal the material even if it is scrap but can be translated into money if sold, will that not amount to the employer loosing the confidence, faith and trust in the employee? The answer to this question is clear and simple 'Yes'. No employer would like to retain such an employee who is not trustworthy, is dishonest, is a thief and who keeps his personal interests and that too by dishonest intentions before the interest of the employer. The Labour Court is not supposed to nor is it expected to force such employees on his employer, if that is done, the Court would be paying dividend to such a selfish and dishonest employee. The Court cannot be a party to this mis-guided endeavour of the workman. In view of the above, the exercise of powers under Section 11-A of the Labour Court, cannot be sustained. Reference can be made

to the judgments of Hon'ble the Supreme Court at this stage to **Divisional Controller, N.E.K.R.T.C. (supra)**, and **Managing Director, North-East Karnataka Road Transport Corporation (supra)**.

(15) Another reason which had persuaded the Labour Court to exercise its power under Section 11-A of the Act was the acquittal of the workman in the criminal proceedings, initiated against him. Hon'ble the Supreme Court in para 21 of the judgment in **Pandiyan Roadways Corporation Limited versus N. Balakrishan (supra)**, has held as follows :—

“An honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when (i) the order of acquittal has not been passed on the same set of facts or same set of evidence ; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceedings has not been considered (see Commr. of Police versus Narender Singh), or ; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court (see G.M. Tank, Jasbir Singh versus Punjab and Sind Bank and Noida Entrepreneurs' Assn. versus Noida, para 18).”

(16) No finding has been recorded by the Labour Court that both the proceedings namely ; departmental proceedings and the criminal case, were on the same set of facts and same set of evidence, without there being any *iota* of difference. In the absence of such finding, solely on the ground of acquittal in the criminal case would not entitle the workman the right of reinstatement in service. It cannot be lost sight that the basic approach in the departmental proceedings and the criminal proceedings are totally different. The nature and purpose of the two proceedings are distinct and the result also is different and above all the nature and standard of proof is different. Therefore, two proceedings cannot be equated with each other as there is a clear drawn distinction between the two. Therefore, merely because

HARYANA ROADWAYS ENGINEERING CORPORATION, BEHRAMPUR 315
ROAD, KHANDS, GURGAON (HARYANA) THROUGH ITS GENERAL
MANAGER v. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I (PRESIDING
OFFICER), GERGAON AND ANOTHER (*Augustine George Masih, J.*)

the workman in the present case stands acquitted in the criminal case would not *per-se* give justification to the Labour Court to exercise its powers under Section 11-A of the Industrial Disputes Act.

(17) The third reason which has weighed in the mind of the Labour Court to persuade it to exercise its powers as vested in it under Section 11-A of the Act was that the workman has an unblemished record of service of nine years. This observation of the Labour Court is belied from the records itself as it has been specifically so stated in the reply filed by the Management to the claim petition of the workman that the workman had stolen one drill machine from the workshop for which disciplinary action was taken against him,—*vide* order dated 2nd November, 1995, the workman was ordered to pay the cost of drill machine amounting to Rs. 2520.33. This factual assertion of the Management was not rebutted by the workman in his replication filed before the Labour Court and in the present writ petition as well. A specific assertion to this effect has been made in para 3 of the writ petition by the petitioner-Corporation which has not been denied by the workman in his written statement filed in this Court in response to the writ petition. That being so, the observations as made by the Labour Court with regard to the unblemished record of the workman prior to the incident for which he had been punished after holding the departmental inquiry is perverse and cannot be accepted.

(18) In view of the above, the exercise of powers under Section 11-A of the Industrial Disputes Act, 1947 by the Labour Court,—*vide* the impugned award cannot be sustained.

(19) The present writ petition is, thus, allowed. The impugned award dated 12th May, 2008 (Annexure P-5), passed by the Industrial Tribunal-cum-Labour Court-I, Gurgaon, is hereby set aside.

R.N.R.