*Before Sat Pal, J*

INDIAN FARMERS FERTILIZER COOP. LTD.,—*Petitioner*

*versus*

PRESIDING OFFICER, LABOUR COURT, CHANDIGARH, AND ANOTHER,—*Respondent*

*CWP 1011 of 1992*

14th July, 1998

*Industrial Disputes Act, 1947—Ss.2(s) and 11-A—Salesman—On evidence nature of duties found to be primarily clerical—No infirmity shown in this finding warranting interference—Workman dismissed after inquiry—Labour Court upholding inquiry but awarding lesser punishment, reinstatement with 50% of back wages—No finding given by the Labour Court on charge 3—High Court instead of remitting case to Labour Court, considering question of quantum on its own in order not to further delay the proceedings—High Court modifying award to the extent of reinstatement with 25% of back wages.*

*Held,* that the duty of the salesman besides providing service to the farmers, included maintaining all the records and expenditure connected with the function of service centre, timely submission of various reports to Area Functioning of Service Centre and to Area Office and State Office. The Salesman is also responsible for maintaining the Service Centre and the stock and he has to ensure that all the registers and records are kept uptodate. His primary duty it to deposit the money collected during the day in the bank and to verify the stock available in the service centre every day before the close of Service centre. He is also required to contact the bank and see that the deposit money is transferred to State Office on day to day basis and in the absence of Helper, he is to see that the day work in the service centre is not effected. From the said document, it is clear that the duties performed by the respondent-employee were mainly of clerical nature. Relying on the said nature of duties, the learned Labour Court came to the conclusion that the respondent employee was a workman under the provisions of the Act. Keeping in view these facts, it cannot be said that the finding of fact recorded by the Labour Court is based on no evidence or extraneous material. I am, therefore, of the opinion that there is no error of law apparent on the face of the record which warrants

interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution.

(Para 17)

*Further held,* that as regards the third contention of the learned counsel for the management that the learned Labour Court while exercising powers under section 11-A of the Act has not taken into consideration the third charge proved against the respondent-employee to the effect that he had furnished wrong information while filling up the application form for appointment, there appears to be merit in this contention. Thus in para 3 of the award, this charge has been noticed but while dealing issue No. 3 pertaining to the termination of the services of the respondent-employee, and while exercising the powers under section 11-A of the Act, there is no specific mention of this charge. The question now arises as to whether in the facts and circumstances of this case, the case should be sent back to the Labour Court for re-adjudication on this point. It was held by the Full Bench of Rajasthan High Court in the case of Rajasthan State Road Transport Corporation that there is no hard and fast rule that the High Court has always to send the matter back to the Labour Court. It was further observed that in order to avoid delayed justice and for vindication of speedy and appropriate relief, the High Court may in some cases incorporate its own findings which it may appear to be just and proper, though it should not be followed as a general rule. I am of the opinion that this is a fit case where this Court should consider as to what would be the adequate punishment taking into consideration the third charge mentioned herein above. I am of the opinion that it would meet the ends of justice if the award is modified to the extent that the workman would be entitled to reinstatement with 25% of back wages instead of reinstatement with 50% of back wages.

(Paras 26 & 27)

P.K. Mutneja, Advocate with Balwinder Singh, Advocate, *for the Petitioner.*

Arun Palli, Advocate with S.P. Sharma, Advocate, *for the Respondent.*

## JUDGMENT

*Sat Pal, J.*

(1) By this judgment, I am disposing of two writ petitions bearing CWP No. 1011 of 1992 CWP 4845 of 1992 as both the writ petitions have been filed against the same award dated 29th November, 1991

passed by the Labour Court, U.T., Chandigarh. In CWP No. 1011 of 1992, the Indian Farmers Fertiliser Co-operative Limited (herein after referred to as the Management) has challenged the award granting the relief of reinstatement with 50% back wages to Shri J.C. Arora (hereinafter referred to as the Workman) and in CWP No. 4845 of 1992, the Workman has challenged that part of the award whereby he has been denied the balance 50% of back wages.

(2) Briefly stated the facts of the case are that the workman was employed by the Management on daily wages on April 4, 1977 as a Salesman. His services were regularised with effect from 11th April, 1979. He was transferred from Sangrur centre of the Management to service centre, Jagadhri where he joined on 5th June, 1980.

(3) The workman was served with a charge-sheet on 29th July, 1981. The summary of charge reads as under:—

"1. That the retail sale price of chemical fertilisers, namely Urea and NPK was increased by the Government of India with effect from 8th June, 1980 (Sunday) and information to this effect was broadcast in the morning news bulletin of 8th June, 1980 at 8.00 A.M. Shri J.C. Arora, Salesman, IFFCO Farmers Service Centre. Jagadhri, unauthorisedly opened the Service Centre on 8th June, 1980 and effected sale of 285 bags of Urea at pre-revised rates, inconnivance with Shri Subhash Chander, the then Helper posted at the Jagadhri Service Centre. Though the actual sale took place on 8th June, 1980, the cash memoes were prepared on the date of 9th June, 1980, which is a serious irregularity.

2. Shri Subhash Chander, ex-Helper, with the active connivance of Shri J.C. Arora and in his presence, effected sale unauthoriselly of 9 bags of Urea and 6 bags of NPK fertilisers at pre-revised rates on 9th June, 1980.

3. The difference in prices of chemical fertilisers as per the revision came to Rs. 27.50 per bag of Urea and 37.50 per bag of NPK and thus the total pecuniary loss cause to the Society was to the tune of Rs. 8,310 due to the unauthorised sale of the above goods of IFFCO.

4. As a matter of rule, IFFCO fertiliser is not to be soled to any fertiliser dealer. In violation of this rule, Shri J.C. Arora, sold 285 bags of Urea to one Shri Gurcharan Singh, who himself is a fertiliser dealer at Jagadhri, but the cash memos were

issued in 5 different names to circumvent the above transaction.

5. In his application form dated 22nd July, 1978 and Attestation Form dated 11th April, 1979, Shri Arora furnished the following wrong information, thereby concealed the facts, whereas a person filling up the said application form and attestation form is required to state all the facts therein truely;

(a) In the employment application form dated 22nd July, 1989 and in the Atestation form dated 11th April, 1979 Shri Arora stated that he worked as a Salesman from 1st September, 1969 to 1st December, 1972 with M/s Ram Raj Agricultural Cooperative Society and also produced an experience certificate for the above period, whereas he actually worked in the office of Sub-Record Office, RNS, 'D' Division, Karnal from 15th February, 1967 to 27th March, 1972 as a Class IV employee.

(b) In his application form dated 22nd July, 1978 and Attestation form dated 11th April, 1979 he had again given wrong information about his employment for a period from 28th March, 1972 to 1st December, 1972 and shown therein as having wroked with M/s Ram Raj Agriculture Cooperative Society at Mamor (U.P.) as a Salesman, whereas the true fact is that during this period he had worked in the office of the District Manager, Food Corporation of India, Rohtak as a Class IV employee i.e. from 28th March, 1972 to 20th September, 1975."

(4) The charges were denied by the workman *vide* his letter dated 18th September, 1981. Thereafter Shri Ramesh Kumar an Officer of the Management was appointed as an Enquiry Officer. The Enquiry Officer by his report dated 24th September, 1984 held that all the charges levelled against the workman had been proved. The management agreed with the findings of the Enquiry Officer and vide order dated 26th November, 1984, terminated the services of the workman.

(5) Against the order of termination, the workman raised the dispute which was referred to the Industrial Tribunal-cum-Labour Court, U.T., Chandigarh.

(6) On the basis of the claim statement filed by the workman and

written statement filed by the management, the learned Labour Court framed the following issues :—

(1) Whether the applicant is a workman ? OPW

(2) Whether the enquiry is vitiated ? OPW

(3) Whether the services of the workman were terminated illegally by the Management ? OPW

(4) Relief.

(7) The learned Labour Court *vide* its award dated 29th November, 1991 answered issue No. 1 in favour of the workman and held that Shri J.C. Arora was a workman. Issue No. 2 was answered in favour of the Management and it was held that the enquiry conducted by the management was not vitiated. With regard to issue No. 3, the learned labour Court exercising its powers under section 11-A of the Act ordered reinstement of the Workman with 50% of back wages. The said award dated 29th November, 1991 has been challenged by the Management in writ petition No. 1011 of 1992 and the workman has claimed the balance 50% of back wages in writ petition No. 4845 of 1992 as stated earlier.

(8) Mr. Mutneja, the learned counsel appearing on behalf of the Management submitted that respondent employee was not a workman as defined under section 2(s) of the Act. he submitted that the respondent employee was working as a Salesman at the time when his services were terminated and keeping in view the nature of duties performed by a Salesman, he was not a workman. In this connection he referred to document Ex. M-6 wherein the duties of a Salesman have been prescribed by the Management. he also referred to the statement of MW-2 Harpal Singh who was Area Manager of the management. Relying on Ex. M-6 and statement of MW-2, the learned counsel contended that respondent-employee was not a Workman as defined under section 2(s) of the Act. The learned counsel also submitted that even in terms of document R2/3, the duties performed by the respondent employee clearly indicated that the duties being performed by the Workman were neither mannual nor unskilled nor skilled nor technical nor operational nor clerical. He further submitted that though some of the duties were of Clerical nature but the main duties were in the nature of selling and convassing for sales. In support of his submission, the learned counsel placed reliance on the following

judgments of the Supreme Court:

1 *Burmah Shell Oil Storage and Distributing Co. of India Ltd.* v. *Burmah Shell Management Staff Association* (1)

2 *T.P. Srivastava* v. *M/s National Tabacco Co. of India Ltd.* (2)

3 *Shri S.K. Maini* v. *M/s Carona Sahu Co. Ltd.* (3)

4 *H.R. Adyanthaya etc.* v. *Sandoz (India) Limited* (4)

(9) The learned counsel further submitted that the charges levelled and proved against the respondent employee were of serious nature and the learned Labour Court having given a clear finding that the enquiry conducted by the management was not vitiated, fell into error by ordering reinstatement of the respondent employee with 50% back wages. The learned counsel further submitted that the powers exercised by the learned Labour Court under section 11-A of the Act were based on extraneous material and as such the award of the learned Labour Court was not legally sustainable. he submitted that while exercising the said powers under section 11-A of the Act, the learned Labour Court has not even taken into consideration the third charge proved against the respondent-employee to the effect that the respondent employee had furnished wrong information while filling up the application form for appointment.

(10) Mr. Palli, the learned counsel appearing on behalf of the Workman referred to the duties which were being performed by the workman and which are contained in the document RW2/3. He submitted that document RW2/3 clearly showed that the duties performed by the Workman were primarily of Clerical nature and also of manual nature. he submitted that even at times, the Workman was required to perform the duties of a Helper. he further submitted that keeping in view the duties mentioned in RW2/3, the learned Labour Court recorded finding of fact that Shri J.C. Arora was a Workman as defined under section 2(S) of the Act. he contended that since the finding of fact recorded by the learned Labour Court was based on legal evidence, such a finding should not be disturbed by this Court in exercise of its powers under Article 226 of the Constitution of India. In support of this submission, he relied on a judgment of this Court in *Carona*

(1) A.I.R. 1971 S.C. 922
(2) J.T. 1991 (4) S.C. 121
(3) J.T. 1994 (3) S.C. 151
(4) J.T. 1994 (5) S.C. 176

*Sahu Co. Ltd.* v. *P.O. Labour Court, Jullundur* (4A) of Delhi High Court in *M/s Roneo Vickers (India) Ltd.* v. *Lt. Governor of Delhi and others* (5) and two judgments of the Supreme Court in *Western India Match Co. Ltd.* v. *Their Workman* (6) and *Ahmedabad Municipal Corporation* v. *Varindera Kumar Jyantibhai Patel* (7).

(11) The learned counsel also submitted that the judgment in the case of *Burmah Shell Oil Storage and Distributing co. of India Ltd.* (supra) was not applicable to the facts of the present case as in that case the Supreme Court was concerned with sales Engineers who were highly qualified. Similarly, the judgment in the case of *T.P. Srivastava* (supra) was also not applicable as in that case it was found that the employee was not doing any Clerical job or job of the Helper, but in the present case the Workman was performing the duties of a Clerk and also was doing the job of Helper. He submited that the judgment in the case of *S.K. Maini* (supra) was also not applicable to the present case as in that case the employee was performing the administrative and managerial duties. As regards the judgment of the Supreme Court in the case of *H.R. Adyanthaya etc.* (supra) the learned counsel submitted that in terms of the law laid down by the Apex Court in this judgment, the respondent employee was a Workman as he was mainly performing the Clerical and Manual duties.

(12) The learned counsel further submitted that the Labour Court has ordered the reinstatement of the Workman with 50% back wages in exercise of its powers under section 11-A of the Act. he submitted that unless it is found that any important legal principle has been violated, the jurisdiction of labour Court under Section 11-A shoul not be interferred with. In support of this submission, the learned counsel placed reliance on the following judgments of the Supreme Court :

(1) *Management of Hindustan Machine Tools Ltd.* v. *Mohd. Usman* (8).

(2) *Jintender Singh Rathore* v. *Shri Bidya Ayurved Bhavan Ltd.* (9).

(3) *Jaswant Singh* v. *Pepsu Road Transport Corporation* (10).

(4A) 1993 (1) R.S.J. 395
(5) 1994 (2) L.L.J. 1078
(6) A.I.R. 1964 S.C. 472
(7) 1997 (4) R.S.J. 19
(8) A.I.R. 1984 S.C. 321
(9) A.I.R. 1984 S.C. 976
(10) A.I.R. 1984 S.C. 355

(13) With regard to the contention raised by the learned counsel of the Management that the learned Labour Court, while exercising the powers under section 11-A of the Act, has not taken into consideration the third charge, the learned counsel submitted that this charge has been impliedly taken into consideration by the Labour court while awarding the relief. In the alternative, the learned counsel submitted that in case this court comes to the conclusion that the said charge has not been taken into consideration, then this court may modify the award suitably but should not send the case back to the Labour Court as a substantial period has already lapsed from the day when the services of the workman were terminated by the management. In support of this submission, he relied on a judgment rendered by a Full Banch of Rajasthan High Court in *Rajasthan State Road Transport Corporation* v. *Gopal Singh* (11).

(14) I have given my thoughtful consideration to the submissions made by the learned counsel of the parties and have perused the records of the case.

(15) Before dealing with the rival contentions as to whether the respondent employee was a Workman as defined under section 2(s) of the Act, it will be relevant to refer to the said provision of the Act which reads as under :—

> "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled technical operational, clerical or supervisory work for hire or reward, whether the terms of empoyment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to the dispute, but does not include any such person—
>
> (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
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> (ii) who is employed in the police service or as an officer or other employee of a prison; or
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> (iii) who is employed mainly in a managerial or administrative capacity; or

(11) 1998 Lab. I.C. 664

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Section 2(s) of the Act as amended came up for consideration before Constitution Bench of the Supreme Court in the Case of *H.R. Adyanthaya's* (supra). After noticing all the earlier judgments, the Supreme Court observed as under :—

"We thus have three three-judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz. manual, clerical, supervisory or technical and two two-judge bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which have without referring to the decisions in May and Baker, WIMCO and Burmah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz. manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

(16) In view of the law laid down by the Apex court, it is now clear that a person to be Workman under the Act must be employed to do any manual, unskilled, skilled, technical, operational clerical or supervisory work. In the case of *Western India Match Co. Ltd.* (supra) which has been noticed and approved by the Supreme Court in the case of *H.R. Adyanthaya* (supra), it was held that it is not merely the nomenclature of the post which an employ is holding but the nature of the work done by the employee has to be examined to find out as to whether an employee is a workman under the provisions of the Act. In this connection reference may be made to the responsibilities and

functions of the Salesman of the management which are contained in the Booklet Ex. M-5 and are also mentioned in Annexure R-2/3. The same reads as under :

"(a) Salesman :

A Salesman plays a pivotal role in effective and efficient function of Service Centre. He should provide services to the farmers and educate them on scientific farming.

The Salesman is responsible for maintaining all the records and the expenditure connected with function of Service Centre. He is also responsible for timely submission of various reports to Area Functioning of Service Centre. He is also responsible for timely submission of various reports to area officers and State Office. He is fully responsible for maintaining the Service Centre and the stock. He should ensure that all the registers and records are kept upto-date. His primary duty will be to deposit the money collected during the day in the bank and should verify the stock available in the Service Centre every day before the close of Service Centre. He should also to contact the bank and see that the deposit money is transferred to State Office on day to day basis. He should maintain minimum balance both at Service Centre and at the Service Centre's Bank. In the absence of Helper, Saleman should see that the days work in the Service Centre should not be effected."

(17) From the above, it is clear that the duty of the Salesman besides providing service to the farmers, included maintaining all the records and expenditure connected with the function of Service Centre, timely submission of various reports to Area Functioning of Service Centre and to Area Office and State Office. The salesman is also responsible for maintaining the Service Centre and the stock and he has to ensure that all the registers and records are kept upto-date. His primary duty (emphasis added) is to deposit the money collected during the day in the bank and to verify the stock available in the Service Centre every day before the close of Service Centre. He is also required to contact the bank and see that the deposit money is transferred to State Office on day to day basis and in the absence of Helper, he is to see that the day work in the Service Centre is not effected. From the said document, it is clear that the duties performed by the respondent-employee were mainly of clerical nature. Relying on the said nature of

duties, the learned Labour Court came to the conclusion that the respondent employee was a Workman under the provisions of the Act. Keeping in view these facts, it can not said that the finding of fact recorded by the Labour Court is based on no evidence or extraneous material. I am, therefore, of the opinion that there is no error of law apparent on the face of the record which warrants interference by this court in exercise of its jurisdiction under Article 226 of the Constitution.

In this connection reference may be made to the case of *Ahmedabad Municipal Corporation* (supra) wherein it was held by the Supreme Court that the High Court can not convert itself into a Court of Appeal and assess the sufficiency or adequacy of the evidence in support of the finding of fact reached by the competent courts of Tribunals. It was further observed that the High Court can interfere only if the finding of fact recorded by the Tribunal is based on no evidence.

(18) Here reference may also be made to the judgment of the Supreme Court in the case of *Western India Match Co. Ltd.* (supra). In this case the Tribunal had accepted the evidence of the workman that the writing work of the Inspectors, Salesman and Retail Salesman took 75% of the time. The Supreme Court had accepted this finding and held that the nature of the work done by the Salesman was of 75% clerical nature and held that the Salesman in that case were Workmen under the provisions of the Act. In the present case also, the learned Tribunal relying on the nature of the duties performed by the Salesman as mentioned in Ex.M-5 (Annexure R-2/3) and also relying on the evidence of the parties, has given a clear finding of fact that the main work of the respondent employee was not to promote sale by convassing but on the contrary the main work was of clerical nature and as such the respondent-employee was a Workman under the provisions of the Act. As stated earlier the judgment of the Supreme Court in the case of *Western India Match Co. Ltd.* (supra) was noticed and approved by the Constitution Bench of the Supreme Court in the case of *H.R. Adyanthaya* (supra). Accordingly, the contention of the learned counsel of the management that the respondent employee was not a Workman under the provisions of the Act is without any merit and is dismissed.

(19) As regards the contention of the learned counsel of the management that the Labour Court having given a finding that departmental enquiry conducted by the management was not vitiated, should not have reinstated the respondent-employee with 50% of back

wages in exercise of its powers under section 11-A of the Act, it will be relevant to examine the provisions of Section 11-A of the Act. The ambit and scope of section 11-A came up for consideration before the Supreme Court in *Workmen of M/s Firestone Tyre and Rubber Co. of India P. Ltd.* v. *The Management and others* (12). In para 36 of the judgment, it was observed that even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved. In para 38 of the judgment, it was observed that "under section 11-A though the Tribunal may hold that the misconduct is proved, nevertheless, it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can under such circumstances award to the Workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11-A." In para-45 of the judgment, it was further observed that "for the first time power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time to interfere with the punishment imposed by an employer".

(20) In the *Management of Hindustan Machine Tools Ltd.* (supra) the Supreme Court up held the award passed by the Labour Court of substituting the penality of dismissal from service by stoppage of two increments on the basis of finding that the punishment of termination was disproportionately heavy.

(21) In the case of *Ved Parkash* v. *M/s Delton Cables India (P) Ltd.* (13), the Supreme Court declared that dismissal of an employee on the charge of abuse of some workers and officers of the Management was unjustified and punishment of dismissal to the employee was set aside.

(22) In *Jitendra Singh* v. *Vaidya Nath Ayurved Bhawan Ltd.* (14) was observed by the Supreme Court that "Wide discretion is vested in the Tribunal under section 11-A and in a given case on the facts established, the Tribunal can vacate order of dismissal or discharge and give suitable direction."

(12) A.I.R. 1973 S.C. 1227
(13) A.I.R. 1984 S.C. 914
(14) A.I.R. 1984 S.C. 976

(23) In *Baldev Singh* v. *Presiding Officer, Labour Court* (15), the Supreme Court upheld an award passed by the Tribunal setting aside termination of service of a Driver of the Roadways for misconduct which resulted in some loss to the corporation. Here reference may also be made to a DB judgment of this Court in *Municipal Corporation Amritsar* v. *The Presiding Officer, Labour Court, Amritsar* (16). In this case it was held that the Labour Court can re-appreciate the evidence and can also interfere with the punishment awarded.

(24) In view of the law laid down by the Supreme Court and this court in the above mentioned cases, it is clear that the Labour Court/ Industrial Tribunal is vested with the power to consider the question of fairness of the enquiry and even if the enquiry is held to be proper, it has got the power to reappreciate the evidence produced during enquiry and further it has the power to interfere with the punishment imposed by the management.

(25) It is true that in the present case the Labour Court has held that enquiry is not vitiated but while dealing with the case under its jurisdiction under section 11-A of the Act, it has given a clear finding that the management has failed to prove that the workman had the prior knowledge of the revision of rates and it may be just possible that the consumers of the dealers might have come to know about the increase and rushed to purchase the fertilizer at the old rate. It may be relevant to point out here that even according to the case of the management, the revised rates were announced on the bulletin of All India Radio, on the morning of 8th June, 1980 and the fertilizer was sold on he old rates on 8th June, 1980 and on the morning of 9th June, 1980 and it has not been established that the Workman had heard the news bulletin and was having the knowledge of the increased rates. From the records, I find that the findings of the Labour Court on this aspect of the matter is based on legal evidence and does not call for any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution. It may also be relevant to mention here that it has been established before the Labour Court that the respondent employee was transferred to Jagadhri on 6th June, 1980 i.e. just two days before the incident and this fact has also been taken into consideration by the learned Labour Court. As stated herein above, in terms of law laid down by the Supreme Court, the Labour Court under section 11-A of the Act has the power to satisfy itself regarding findings arrived at by an employer even in an enquiry which has been held properly and has the power to interfere with the punishment imposed

(15) A.I.R. 1987 S.C. 104
(16) 1995 (4) A.I.J. 191

by an employer. In view of this the contention of the learned counsel of the management is rejected.

(26) As regards the third contention of the learned counsel of the management that the learned Labour Court while exercising powers under section 11-A of the Act has not taken into consideration the third charge proved against the respondent employee to the effect that he had furnished wrong information while filling up the application form for appointment, there appears to be merit in this contention. Though in para 3 of the award, this charge has been noticed but while dealing issue No. 3 pertaining to the termination of the services of the respondent-employee, and while exercising the powers under section 11-A of the Act, there is no specific mention of this charge. The question now arises as to whether in the facts and circumstances of this case, the case should be sent back to the Labour Court for re-adjudication on this point. It was held by the Full Bench of Rajasthan High Court in the case of *Rajasthan State Road Transport Corporation* (supra) that there is not hard and fast rule that the High Court has always to send the matter back to the Labour Court. It was further observed that in order to avoid delayed justice and for vindication of speedy and appropriate relief, the High court may in some cases incorporate its own finding which it may appear to be just and proper, though it should not be followed as a general rule.

In this connection reference may also be made to the judgment of the Supreme Court in *Workman of Bharat Fritz Werner (P) Ltd.* v. *Bharat Fritz Werner (P) Ltd.* (17). In this case, it was observed as under :—

> "Moreover, in view of the provisions contained in section 11-A of the Act, which empowers the industrial tribunal to go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the tribunal to set aside the order of discharge or dismissal as the circumstances of the case may require, it was open to the High Court to consider what would be adequate punishment for the misconduct found to have been committed by these workmen and take the view that the acts of misconduct found proved against these five workmen were not such as to warrant dismissal and denial of one half of the back wages for the period of about six years was adequate punishment for the misconduct found to have been committed."

(17) A.I.R. 1990 S.C. 1054

(27) In the present case the services of the respondent employee were terminated on 26th November, 1984. The impugned award was passed by the learned Labour Court on 29th November, 1991. Keeping in view these facts and the law laid down by the Supreme Court in the case of *Workmen of Bharat Fritz Werner (P) Ltd;* (supra). I am of the opinion that this is a fit case where this court should consider as to what would be the adequate punishment taking into consideration the third charge mentioned herein above. With regard to this charge, the learned counsel for the respondent employee, had argued that when this information is alleged to have been given by the respondent employee, the respondent employee was employed only on daily wages and no experience certificate was required to be given to the management. The learned counsel further submitted that on 11th April, 1979 when the services of the respondent employee were regularised, the respondent employee had already attained the requisite experience of two years with the management itself. He also drew my attention to Ex.M-1 of the lower court records to contend that before the issue of the charge sheet, the respondent employee himself had written a letter dated 12th July, 1979 wherein he had stated that in his initial application for appointment of Salesman, he had inadvertantly written that he had experience as Salesman though in fact he was not having any experience at that time and as such necessary correction may be made in the official records. Though the enquiry officer in his report has given a finding that the said letter dated 12th July, 1979 is not on record of the management but the acknowledgement (which is at page No. 214) of the lower court records of this letter has been brought on record before the learned Labour Court. The counsel of the Management had argued that as per the enquiry report it has not been proved that the said letter dated 12th July, 1979 was received by the management and the same should not be taken into consideration. Keeping in view the submissions made by the learned counsel for the parties and also the fact that on the date of regularisation (i.e. 11th April, 1979) the respondent employee had attained the requisite experience for appointment as Salesman. I am of the opinion that it would meet the ends of justice if the award is modified to the extent that the Workman would be entitled to reinstatement with 25% of back wages instead of reinstatement with 50% of back wages.

(28) In view of the above discussion, the writ petition filed by the management is partly allowed and the impugned award is modified in the manner indicated hereinabove and it is held that the workm

entitled to reinstatement with 25% of the back wages. The writ petition No. 4845 of 1992 filed by the workman is, however, dismissed. The parties are left to bear their own costs.

(29) Before parting with the judgment, I would like to record my appreciation for the lucid arguments and able assistance rendered by Mr. P.K. Mutneja, learned counsel for the management and Shri Arun Palli, the learned counsel who appeared for the workman. Both the learned counsel addressed comprehensive arguments on each and every point raised in these writ petitions.

*R.N.R.*

*Before Jawahar Lal Gupta and N.C. Khichi, JJ*

NAHAR SINGH,—*Petitioner*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*

*CWP No. 1322 of 1998*

The 16th April, 1998

*Punjab Police Rules, 1934—Rl. 14.48—Reversion on the basis of adverse remarks—Fortuitious promotion given to the petitioner in the rank of ASI but in his own rank and pay of Head Constable—Reversion not made by way of punishment—No opportunity of hearing is required to be given before passing reversion order—Adverse remarks duly communicated and represented against cannot be faulted only on the ground that the defects were not pointed out before recording A.C.R—Looking to the nature of adverse remarks not being based on any documentary evidence and based only on observation, such adverse remarks not liable to be interefered with—Petitioner can be dealt with in terms of appointment.*

*Held that,* the remarks were based on observation during the relevant period. It was not alleged that there were complaints which were required to be conveyed to the petitioner. In the very nature of things, there would not be documentary or other material which would be in the possession of the authority and may have to be conveyed to the official concerned. It cannot be said that merely because nothing had been conveyed to the petitioner prior to the recording of the adverse remarks that the report is vitiated. Still further, the representation submitted by the petitioner against these remarks had been considered