IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(L) No. 6555 of 2010

.....

Management of Telco (Tata Engineering Locomotive Company Ltd.) Now Tata Motors Ltd., through its duly constituted Attorney Sri Pravin Kumar Sinha, son of late B.P. Sinha, resident of Telco Company, P.O. & P.S.- Telco, town Jamshedpur, District- East Singhbhum, Jamshedpur and currently posted as Senior General Manager (Manufacturing, M/s Tata Motors Ltd.)

... ... **Petitioner**

Versus

1. Anita Sharma, wife of late Kaushal Kishore Sharma

2. Dinkar Kumar

3. Ravi Shankar, both sons of late Kaushal Kishore Sharma, All residents of Village, P.O. and P.S. Purshottampur, Distt.- Muzaffarpur

4. The State of Jharkhand ... ... **Respondents**

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For the Petitioner : Mr. V.P. Singh, Sr. Adv.

For the Resp. Nos. 1 to 3 : Mr. S.L. Agarwal, Adv.

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Present:

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

.....

C.A.V. ORDER

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10/24.06.2020 Heard Mr. V.P. Singh, learned senior counsel for the petitioner and Mr. S.L. Agarwal, learned counsel appearing for the respondent nos. 1 to 3.

2. In this writ application, the petitioner has prayed for setting aside the Award dated 29.04.2010 passed by the learned Presiding Officer, Labour Court, Jamshedpur in Reference Case No. 8 of 1999, by which it has been held that the termination of the employee, Kaushal Kishore Sharma is neither proper nor justified and has further directed the petitioner to pay 50% back wages to the legal heirs of the said workman for the period from 17.07.1991 to 11.03.2002 along with consequential benefit in terms of money.

3. The Government of Bihar vide notification dated

21/22.06.1999 had referred the following dispute for adjudication before the learned Labour Court, Jamshedpur on the following terms:

> "Whether the termination of services of the workman Sri Kaushal Kishore Sharma ticket no. 1150/05587/2 of Telco Ltd, Jamshedpur is justified ? If not, what relief the workman is entitled to ?

In the written statement filed on behalf of the Management it has been stated that M/s Tata Engineering and Locomotive Company Ltd., Jamshedpur is a public limited Company registered under the Indian Company's Act, 1956 and has got a factory establishment at Jamshedpur wherein various types of vehicles and its components are manufactured. The Company has got a work standing order duly certified under the Industrial Employment (Standing Orders) Act, 1946. The Company has from the very beginning an internal management for taking disciplinary action.

It has been stated that the concerned workman Kaushal Kishore Sharma was inducted as a trainee on and from 11.02.1986 and was absorbed in the permanent establishment as a fitter/operator on and from 27.04.1987 vide office order dated 04.05.1987 and lastly he was working in the Forge (outer complex) department of the Company. On 14.07.1991 the workman was on 'B' shift duty from 2.00 P.M. to 10.30 P.M. At about 7.10 P.M. he had entered Plant-II (Engine Division) unauthorizedly and about 7.30 P.M. he was seen coming out of the division carrying some materials which was concealed inside a hand bag. While the workman was trying to conceal the material in the

scooter he was apprehended by the security staffs of the company and in course of search three numbers of drive shafts were recovered which were estimated to be valued at Rs. 1995/-. The said materials were the Company's property which the workman was trying to take out for his personal gain.

It has further been stated that the aforesaid conduct amounted to a misconduct on the part of the workman under Clause 24 (x) and (xv) of the Certified Works Standing Orders of the Company and accordingly he was issued a charge-sheet dated 04.08.1991 whereby he was called upon to submit his explanation. An explanation was submitted which was found unsatisfactory and as such the inquiry continued as stipulated.

The inquiry concluded on 07.07.1992 and the Enquiry Officers submitted their report holding the workman guilty of the charges levelled against him. The Senior General Manager on being satisfied about the guilt of the workman concerned as per the inquiry report passed an order of dismissal w.e.f. 17.07.1991.

4. In the written statement filed on behalf of the workman it has been stated that the service record of the workman is impeccable. He has denied the allegation in the charge-sheet and has stated that on the alleged date he was not on duty because of sickness but the departmental head had asked him to accept his guilt and assured him that the disciplinary proceedings would be dropped. On 30.03.1991 when the workman was going to attend his duty he was beaten up by the convoy drivers of M/s Telco Ltd. for which he was admitted to the hospital and he was under treatment from 30.03.1991 to 01.10.1991.

It has been stated that the Enquiry Officers did not allow the workman any opportunity of defense in spite of repeated insistence by the workman. He has been victimized on account of his trade union activities. A copy of the enquiry proceeding was not provided to the workman and the questions asked from the Management witnesses were not recorded by the Enquiry Officers. It has also been stated that the dismissing authority was not empowered to impose the order of punishment.

5. Mr. V.P. Singh, learned senior counsel for the petitioner has submitted that the dispute has been raised by the concerned workman after a considerable delay and hence is a stale dispute. Reference in this connection has been made to the case of "*Nedungadi Bank Ltd. versus K.P. Madhavankutty and Others*" reported in (2000) 2 SCC 455. It has been stated by the learned senior counsel for the petitioner that the fairness and propriety of the domestic inquiry was held in favour of the Management and the learned Labour Court had also come to a conclusion that misconduct against the concerned workman was proved. It has further been stated that on account of the proven misconduct of the concerned workman the Management had lost confidence upon him and therefore his services was rightly terminated. Mr. Singh further submits that the learned Labour Court could not have sat in judgment over the findings of the domestic inquiry and the punishment imposed when the misconduct has been proved. He has referred to the case of "*The Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd versus The Management and Others*" reported in AIR (1973) SC 1227 and AIR (1974) SC 696. He has also

referred to the case of "*Divisional Controller, KSRTC (NWKRTC) versus A.T. Mane*" reported in (2004)-III-LLJ 1074, while stating that there cannot be a hyper technical approach by the learned Labour Court as the probative value of the enquiry proceedings are to be considered only.

6. It has been submitted that once an act of misconduct has been proved no sympathetic approach by the learned Labour Court is permissible and in support of such contention reference has been made to the case of "*Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and Others versus Secretary, Sahakari Noukarara Sangha and Others"* reported in (2000) 7 SCC 517. It has also been canvassed by Mr. Singh, learned senior counsel for the petitioner that the finding given by the learned Labour Court regarding the incompetence of the Officer issuing charge-sheet is erroneous since the workman concerned failed to prove as to who was his appointing and disciplinary authority and therefore the competency of the person issuing charge-sheet cannot be called into question. He submits that issuance of charge-sheet is a formal affair. Reference in such context has been made to the case of "*Steel Authority of India and another" versus Dr. R. K. Diwakar and others"* reported in AIR (1998) SC 2210. Reliance has also been placed in the case of "*M.Y. Khan versus M/s. Tata Engineering & Locomotive Company Limited, Jamshedpur***"** reported in (2009) 3 JLJR 236, which was affirmed in L.P.A. No. 306 of 2009.

7. One of the basis for answering the reference in favour of the concerned workman was non-issuance of a second show cause notice prior to infliction of

punishment. As per the Works Standing Order according to Mr. Singh there is no provision for a second show cause notice and the learned senior counsel has stressed upon Clause 26 (iv) which the learned Labour Court according to him had misinterpreted. In this context he has placed reliance in the case of "*Associated Cement Companies Ltd. versus T. C. Shrivastava and Others"* reported in (1984) II LLJ 105.

8. Mr. S.L. Agarwal, learned counsel appearing for the respondent nos. 1 to 3 has initially drawn the attention of the Court to the reference made and has stated that once the reference has been decided the question as to whether the demand is stale or not cannot be gone into at this stage. He has stated that specific averment has been made by the workman concerned that the authority who had issued the order of termination was not empowered under the Works Standing Orders to act thus and such pleading could not be controverted by the Management. While placing reliance on paragraph 20, 21 and 22 of the Award, Mr. Agarwal, submits that the General Manager did not have the power to sub delegate authority to any subordinate as it was against the resolution of the Board of Directors.

9. Mr. Singh, while replying to the aforesaid contentions has submitted that the workman has not discharged his onus by making necessary pleadings and producing documents in support of the fact as to who were his appointing authority, controlling authority and disciplinary authority. He has stated that the quantum of punishment is justified since the Management had lost confidence in the concerned

workman. Mr. Singh, concludes his argument by submitting that the learned Labour Court has given a premium to the workman for committing an act of theft.

10. The learned Labour Court while deciding the reference had framed the following issues:

(i) Whether the termination of services of workman Sri Kaushal Kishore Sharma, ticket no. 1150/05587/2, of M/s. Telco Ltd, Jamshedpur, as made by the management is proper and justified ?

(ii) Whether chargesheeted workman Sri Kaushal Kishore sharma has committed theft of the material belonging to the Company and committed misconduct as per order no. 24 (x) (xv) of certified works standing order of the company ?

(iii) Whether the authorities of the management who issued chargesheet, office order appointing Enquiry Officer, termination order, were conferred with a power to do so in accordance with law ?

(iv) Whether the punishment as imposed by the management vide office order no. 12418 dated 15.10.1992, terminating the services of the chargesheeted workman Kaushal Kishore Sharma, is disproportionate and too harsh ? And whether it is a fit case of exercising jurisdiction and power u/s 11A of the I.D. Act, 1947 ?

(v) To what relief/relieves (sic) chargesheeted workman is entitled to receive ?.

11. Before adverting to a threadbare discussion on each of the issues dealt with by the learned Labour Court it is to be noted that the fairness and validity of the domestic inquiry was never challenged perhaps on account of the death of the concerned workman during the pendency of the adjudication and as such the

learned Labour Court held the inquiry to be fair and proper.

12. Mr. V.P. Singh, learned senior counsel for the petitioner has stated about the dispute being stale.

13. In the case of "*Nedungadi Bank Ltd. versus K.P. Madhavankutty and Others*" reported in (2000) 2 SCC 455, it was held that an administrative order which does not take into consideration statutory requirements or travels outside that is certainly subject to judicial review limited though it may be. In the context of the said case it was also held as follows:

> ***"7.*** *In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances an industrial dispute did arise or was even apprehended after a lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become an industrial dispute and the appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming it as an industrial dispute. The Central Government lacked power to make reference both on the ground of delay in invoking the power under Section 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. The Bank was justified in thus moving the High Court seeking an order to quash the reference in question.*

14. In the present case the concerned workman was terminated from service vide office order dated 15.10.1992. The industrial dispute was raised by the concerned workman through a letter of demand dated 13.09.1995 which appears to be within three years from

the date of termination. The workman had challenged the validity of the domestic inquiry by questioning the authority of the persons issuing charge-sheet as well as the authority imposing punishment. Therefore the circumstances leading to the observations made in "*Nedungadi Bank Ltd. versus K.P. Madhavankutty and Others*" (supra) are absent in the present case and therefore it cannot be concluded that the dispute was stale or for that matter no industrial dispute existed.

15. So far as issue no. II framed by the learned Labour Court is concerned the same has been held against the workman as quoted hereinunder:

> ***"****Having regards to the facts, circumstances and evidence as discussed above, I find that there are reliable evidence to believe that workman has committed misconduct and management has been able to prove and it establishes that charge-sheeted witnesses has committed theft of 03 no. of drive shaft and it is misconduct as per order no. 24 (x) (xv) of standing order of company, as such issue no. (ii) stands decided accordingly i.e. against the workman and in favour of the management.****"***

16. The learned Labour Court has considered issue nos. (i) and (iii) in unison. One of the conclusions arrived at is that the Manager (NFC) of Forge division was not conferred with the power to issue charge-sheet against the concerned workman. In this context reference is made to the case of "*M.Y. Khan versus M/s. Tata Engineering & Locomotive Company Limited, Jamshedpur*" reported in (2009) 3 JLJR 236 and the extracted portion reads as follows:

> ***"****(vi) Learned counsel for the petitioner has submitted that the person who has issued notice could not have been given a charge-sheet to the present petitioner and this aspect of the matter has not been properly appreciated by the Labour*

Court. This contention is not accepted by this Court, firstly for the reasons that the present petitioner was working under the Production Manager who has issued the charge-sheet. That officer knows what has happened, in his own unit. Secondly, for the reason that an officer, who has issued a charge-sheet is a high ranking officer than the petitioner. Thirdly, for the reason that as per the Management, there was already a delegation of power. Fourthly, for the reason that even otherwise also looking to the nature of the post of the person who has issued the charge-sheet, it appears that he is a Production Manager fifthly for the reason that issuance of charge-sheet by the Management is nothing, but, a rough sketch of the allegations, levelled against the present petitioner by the Management. Suffice it will be for the purpose of issuing charge-sheet so long as it is not given by the officer of the rank below than that of the petitioner. If any officer is of a high rank than that of the petitioner, I see no reason to quash the whole enquiry procedure and award passed by the Lower Court and thereby to brush aside the whole Management evidence. Charge-sheet is a rough sketch of the whole incident. It is not an evidence itself and sixthly for the reason that no prejudice has been caused to the present petitioner by issuance of charge-sheet by the Production Manager."

17. The order of the learned Single Judge as referred to above has been subsequently affirmed in L.P.A. No. 306 of 2009.

18. In the case of "*Steel Authority of India and Another" versus Dr. R. K. Diwakar and others*" reported in AIR (1998) SC 2210, while placing reliance in the case of **"***Director General, ESI and Another versus T. Abdul Razak***"**, reported in (1996) 4 SCC 708, it was held that the controlling authority can issue charge-sheet.

19. What can be summed up from the aforesaid judgments/orders is that merely on account of the plea

of incompetence against the person issuing charge-sheet the domestic inquiry cannot be razed to the ground. The concerned workman was working in the Forge (outer complex) division when the incident of theft had occurred. The charge-sheet issuing authority was the Manager (NFC) of Forge division and was much higher in rank to the concerned workman apart from being the Manager of the same division in which the workman was posted. Therefore the competency of the authority who had issued charge-sheet cannot be doubted. The learned Labour Court has therefore arrived at a wrong conclusion in that regard.

20. The next issue which comes up for consideration is whether Clause 26 (iv) of the Works Standing Order has been complied with or not. The learned Labour Court has adopted a rather slip shod approach to the wordings of Clause 26 (iv) of the Certified Works Standing Orders which reads as follows:

> ***"(iv)*** *If during the enquiry it is found that the employee is guilty of misconduct other than that stated in the order of suspension, the employee shall none-the-less be liable to punishment for misconduct provided by Order 25, but before any punishment is awarded to him, he shall be afforded a reasonable opportunity of explaining and defending his actions in respect of such act of misconduct as provided by sub-clause (i).**"***

21. The said clause clearly reveals that the same is to be generated if during an enquiry the employee is found guilty of misconduct other than that stated in the suspension order a second show cause notice is to be issued prior to imposing any punishment. It does not speak of a second show cause notice in all cases. A niche has been carved out denoting the circumstance in

which a delinquent employee is entitled to a second show cause notice. The concerned workman does not fit into the carved out criteria simply because there was no deviation in the subject matter of enquiry either in the suspension order or in the charge-sheet or for that matter in the findings recorded in the enquiry report. Therefore the misconduct which was proved in the departmental proceeding was confined to the misconduct which was alleged in the charge-sheet and absence of any finding deviating from the charges levelled against the delinquent employee would not lead to invocation of Clause 26 (iv) of the Certified Works Standing Order. It must also be borne in mind that the Works Standing Order is certified under the Industrial Employment (Standing Orders) Act, 1946 and has the statutory force of law. Suffice it would be in the aforesaid context to refer to the case of *"Associated Cement Companies Ltd. versus T. C. Shrivastava and Others"* reported in *(1984) II LLJ 105*, wherein the said question was dealt with in the following manner:

> **"8.** *At the outset the legal position as has been clarified by this Court in the Saharanpur Light Railway Co.'s case (supra) may be stated. In the context of certain modification sought to be introduced in a Standing Order requiring a second show cause notice this Court has observed thus:*
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> > *"As regards the modification requiring a second show cause notice, neither the ordinary law of the land nor the industrial law requires an employer to give such a notice. In none of the decisions given by the Courts or the Tribunals such a second show cause notice in the case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Article 311. Even that*

has now been removed by the recent amendment of that Article. To import such a requirement from Article 311 in industrial matters does not appear to be either necessary or proper and would be equating industrial employees with civil servants. In our view, there is no justification on any principle for such equation. Besides, such a requirement would unnecessarily prolong disciplinary enquiries which in the interest of industrial peace should be disposed of in as short time as possible. In our view it is not possible to consider this modification as justifiable either on the ground of reasonableness or fairness and should therefore be set aside."

It is thus clear that neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing Order may not provide for it but unless the Standing Order provides for it either expressly or by necessary implication no inquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity. The question is whether para 3 of the Standing Order No.` 17 provides for such second opportunity being given to the delinquent ? The relevant words are "all dismissal orders shall be passed by the Manager ... . after giving the accused an opportunity to offer any explanation". The underlined words are wholly inappropriate to convey the idea of a second bearing or opportunity on the question of punishment but appropriate in the context of seeking an explanation in regard to the alleged misconduct charged against him. An explanation is to be called from the "accused" which suggests that the same is to be called for prior to the recording of a finding that the delinquent is guilty of misconduct; it is the alleged misconduct that is to be explained by him and not the proposed punishment. On a plain reading of the relevant words no second opportunity of showing cause against the proposed punishment is contemplated either expressly or by necessary implication. In other words, it is clear to us that the opportunity

*spoken of by para 3 of S. O. 17 is the opportunity to be given to the delinquent to meet the charges framed against him. In this connection it will be pertinent to mention that the concerned S. O. was framed and came into force on March 1, 1946 and was duly certified on October 16, 1952 under the Industrial Employment (Standing Orders) Act, 1946 i. e. prior to the enunciation, of the law by Courts regarding the observance of the principles of natural justice such as issuance of a charge-sheet holding of an inquiry, opportunity to lead evidence, etc. and it is well-known that after the enunciation of these principles model standing orders have been framed to provide for the detailed steps required to be undertaken during a domestic inquiry Since the instant Standing Order was certified prior to the formulation of the above principles it merely contains a bald provision for giving the accused an opportunity to offer any explanation. In other words, different stages in domestic inquiry were never in the contemplation of the framers of the S. O. That being the position it would be difficult to attribute any intention to the framers thereof to provide for a second opportunity, being given to the delinquent of showing cause against the proposed punishment The latter part of para 3 merely casts a unilateral obligation on the concerned authority or the officer to give due consideration to the gravity of the misconduct and the previous record of the delinquent in awarding the maximum punishment.***"***

22. Learned counsel for the respondent nos. 1 to 3 have relied upon the case of "*A.K. Roy and Another versus State of Punjab and Others*" reported in (1986) 4 SCC 326, with regard to sub delegation and emphasis has been put on the following:

10. *A careful analysis of the language of Section 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfilment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or the*

prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in Section 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of Section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of the negative words in Section 20(1) "No prosecution for an offence under this Act … shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well-known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th Edn., p. 263 in his own terse language:

> *"If the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding."*
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> *(emphasis supplied)*

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

11. *The first part of Section 20(1) of the Act lays down the manner of launching prosecutions for an offence under the Act, not being an offence under Section 14 or Section 14-A. The second part provides for delegation of powers by the Central Government or the State Government. It enables that prosecutions for an offence under the Act can also be instituted with the written consent of the Central Government or the State Government or by a person authorised in that*

behalf, by a general or special order issued by the Central Government or the State Government. The use of the words "in this behalf" in Section 20(1) of the Act shows that the delegation of such power by the Central Government or the State Government by general or special order must be for a specific purpose, to authorise a designated person to institute such prosecutions on their behalf. The terms of Section 20(1) of the Act do not postulate further delegation by the person so authorised; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and records his reasons for the launching of such prosecution in the public interest.

23. The judgment referred to by the learned counsel for the respondent nos. 1 to 3 does not help his cause since the issuing authority was of a much higher rank and competent to issue charge-sheet irrespective of the fact as to whether there could be a sub delegation of power by the delegating authority in absence of any instructions/directions of the Board of Directors or not. Such conclusion by this Court stems from the judgments rendered in *"M.Y. Khan versus M/s. Tata Engineering & Locomotive Company Limited, Jamshedpur"* (supra) and **"***Director General, ESI and Another versus T. Abdul Razak***"** (supra). The conclusion arrived at by the learned Labour Court therefore appears to be erroneous so far as the interpretation of Clause 26 (iv) of the Works Standing Order is concerned.

24. Issue nos. 1 and 3 as formulated by the learned Labour Court has been clubbed together and accordingly a finding has been arrived at in favour of the concerned workman. The issues regarding competency of the authority to issue charge-sheet and non-observance of Clause 26 (iv) of the Works Standing Order have been dealt with and as held above both the

said issues were erroneously decided in favour of the workman concerned. Regarding the issue as to whether the punishing authority was competent to pass such order has not at all been comprehensively discussed by the learned Labour Court. In fact the Award is replete with a finding that the Manager (NFC) of Forge Division was not competent to issue charge-sheet and the Senior General Manager had failed to comply with the provisions of Clause 26 (iv) of the Works Standing Order. The learned Labour Court has placed reliance in the case of "M/s. Tata Engineering and Locomotive Company Ltd., versus State of Jharkhand [W.P.(L) No. 7046 of 2006]" but it is to be noted that the writ application as referred arose out of an order of the learned Labour Court holding the domestic enquiry to be unfair improper and against the mandate of law. The finding of the learned Labour Court was not conclusive as opportunity was always available to the Management to adduce evidence before the adjudicating authority as held in the case of the *"The Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd versus The Management and Others"* reported in AIR (1973) SC 1227. Therefore such reliance by the learned Labour Court was misplaced.

25. The other issue which has been dealt with is whether the punishment imposed upon the concerned workman was disproportionate or not. It was ultimately held to be disproportionate.

26. The concerned workman was charged with the stealing of three numbers of drive shafts. The said misconduct was proved in the departmental proceeding and the learned Labour Court had also agreed to such finding.

27. Can the valuation of an article which forms the subject matter of misconduct be the guiding force in deciding the imposition of punishment or the entire effect of such act as a whole is to be considered ? It is difficult to lay down a strait jacket formula for considering the proportionality/dis-proportionality of an act of punishment. But at the same time if the act of an employee erodes the faith put upon him by the Management the same would invite stringent punishment. An industrial establishment in order to foster industrial peace and harmony is dependent on mutual faith and co-existence. Once the faith of the Management upon an employee erodes on account of a misconduct and the Management loses confidence on such employee any lessor punishment would give a license to such employee for committing future acts of indiscipline. Therefore such misconduct has to be nipped in the bud. Any sympathy in such context would be misplaced. In the case of "*Divisional Controller, Karnataka KSRTC (NWKRTC) versus A.T. Mane"* reported in *(2005) 3 SCC 254,* it was held as follows:

> ***"13.*** *This Court in the case of B.S. Hullikatti held in similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment.***"**

28. Similarly in the case of *"Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and Others versus Secretary, Sahakari Noukarara Sangha and Others"* reported in (2000) 7 SCC 517, it was held thus:

"6. *As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, maybe for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari.) In U.P. SRTC v. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs 2.35 but recovering @ Rs 5.35 per head and also by making entry in the waybill as having received the amount of Rs 2.35, which figure was subsequently altered to Rs 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corpn. Ltd. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp. 161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.***"***

29. The learned Labour Court therefore erroneously adopted a sympathetic approach while holding that the punishment imposed upon the concerned workman of termination was disproportionate.

30. In such view of the matter, therefore, the misconduct having been proved by the Management the consequent order of termination passed by the concerned authority was a just and proper punishment. Moreover, the other aspects of the matter has also been considered by this Court and it conclusively proves that the Award dated 29.04.2010 is perverse and illegal and is liable to be set aside.

31. The issue with respect to the emoluments to be paid to the legal heirs of the workman concerned consequent to the order of termination being set aside by the learned Labour Court as depicted in issue no. (v) in view of the findings recorded above has become redundant.

32. Consequent to the discussions made hereinabove, this writ application stands allowed and the impugned Award dated 29.04.2010 passed by the learned Presiding Officer, Labour Court, Jamshedpur in Reference Case No. 8 of 1999 is hereby quashed and set aside.

(R. Mukhopadhyay, J.)

Alok/-