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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**DATE OF DECISION: 09.09.2025**

**GURSEWAK SINGH**

... Appellant (s)

Versus

**CHANDIGARH TRANSPORT UNDERTAKING AND ANOTHER**

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL  
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Dinesh Kumar, Advocate for the petitioner.

**ANUPINDER SINGH GREWAL, J. (ORAL)**

The appellant has impugned the judgment of the Single Bench dated 01.04.2025 whereby the writ petition preferred by the respondent No.1 challenging the award dated 26.03.2004 passed by the Presiding Officer, Labour Court, U.T., Chandigarh, has been allowed.

2. Learned counsel for the appellant-workman submits that although the appellant had remained absent from service as he was unwell, but he had been taken back in service unconditionally by respondent No.1 and therefore, the Labour Court had rightly held that the appellant's services had been terminated illegally. The Writ Court ought not to have set aside the award of the Labour Court.

3. Heard.

4. It is the case of the appellant that he was appointed as a Conductor by respondent No.1 on 11.08.1982. He remained absent from duty from 19.10.1988 to 01.11.1988 after he had been granted medical leave on account of back ailment. However, he did not resume his duty on 01.11.1988 and departmental proceedings were initiated against him. Communications sent to



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the appellant were received back with the report that he was 'out of station'. The appellant did not participate in the proceedings despite publications in three newspapers in March, 1989 and consequently, he was proceeded against *ex-parte*. The charge of absence from service without leave was proved. The appellant was issued notice asking him to show-cause why his services be not terminated. The appellant indeed submitted his joining report on 13.03.1991 stating that he was now cured and fit to resume his duties. He was allowed to join duty by the General Manager from 10.04.1991 as the appellant had stated that the show cause notice dated 06.04.1990 was served upon him only on 21.03.1991. Thereafter, the Divisional Manager called him for personal hearing on 03.02.1993 and after considering the reply preferred by the appellant, the Divisional Manager terminated his services vide order dated 15.03.1993. The appellant had challenged the order dated 15.03.1993 by preferring an appeal which was dismissed on 11.11.1993. In the meantime, the appellant had sent a demand notice on 24.05.1993 and a reference was made to Labour Court on 11.01.1995.

5. The Labour Court, in its award while holding that the inquiry was fair and proper, invoked section 11-A and modified the punishment from termination of services to stoppage of four increments with cumulative effect, on the ground that the punishment of termination of service was disproportionate to the misconduct. It also directed that the period of absence from duty be treated as leave without pay. However, the award of the Labour Court was challenged by respondent No.1 by preferring writ petition. The Single Bench, after observing that the appellant had proceeded on unauthorized leave for almost 2 ½ years and had offered no explanation for the same except for an unsubstantiated explanation of illness, had arrived at the conclusion that the appropriate



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punishment for such grave misconduct of prolonged absence from duty without leave, was dismissal from service. The Single Bench had set aside the award of the Labour Court while relying on the judgement of the Supreme Court in the case of *Union of India and others vs. Const. Sunil Kumar 2023 SCC Online SC 56* wherein it has been held by the Supreme Court that in exercise of powers of judicial review, the writ Court is empowered to modify the punishment if it is found to be ‘strikingly disproportionate’ to the charges proved. The relevant extract of the judgement is reproduced hereunder:-

*“6.2 xxx xxx In the case of Surinder Kumar (supra) while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of Union of India Vs. R.K. Sharma; (2001) 9 SCC 592 that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution. 6.3*

*Applying the law laid down by this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under Article 226 of the Constitution of India. In the facts and circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Xxx*

*xxx”*



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6. We are in agreement with the judgment of the Single Bench for the reason that no worthwhile explanation has been put forth by the appellant for remaining absent from duty without leave for a period of almost 2 ½ years. In these circumstances, the termination of service of the appellant for absence for such an extended period, without sanctioned leave or any justifiable cause, cannot be considered ‘shockingly disproportionate’ to the misconduct. We draw support from the judgment of the Supreme Court in ***Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108***. In that case respondent therein who was working as Junior Engineer in the Chennai Metropolitan Water Supply and Sewerage Board, had remained continuously absent from duty without any intimation to the employer since 28.08.1995. On 01.04.1997 he had reported to duty with the medical certificate for his absence from duty for the period commencing 28.8.1995 to 31.03.1997. He was issued the charge-sheet and thereafter, was dismissed from service. The judgment of the High Court holding that there was no past misconduct of desertion/absence and, therefore, the punishment of dismissal from service for the first time desertion/absenteeism was too harsh and disproportionate, was set aside by the Supreme Court. It was held by the Supreme Court that dismissal for absence from duty without leave for almost 1 year and 7 months could not be held to be shockingly disproportionate of the misconduct. The relevant extract of the judgment is reproduced hereunder:-

**32. The learned counsel for the respondent has endeavoured hard to impress upon us that the respondent had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of “habitual absenteeism” is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period**



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*with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.*

*33. Another aspect needs to be noted. The respondent was a Junior Engineer. Regard being had to his official position, it was expected of him to maintain discipline, act with responsibility, perform his duty with sincerity and serve the institution with honesty. This kind of conduct cannot be countenanced as it creates a concavity in the work culture and ushers in indiscipline in an organisation.”*

7. It is trite that although under Section 11-A the Tribunal/ Labour Court has the jurisdiction to modify the punishment imposed by the employer, such discretion must be exercised judiciously and interference is warranted only when punishment is wholly disproportionate to the charge. It must record reasons for arriving at such a conclusion and mere expression that punishment is shockingly disproportionate would not meet the requirement of law. The Industrial Courts cannot sit in appeal over the decision of the employer, unless there exists a statutory provision in this behalf. Moreover, the Tribunal/ Labour Court cannot reduce punishment of a workman merely on compassionate grounds. Reference can be made to the judgment of the Supreme Court in ***Bharat Forge Co. Ltd. v. Uttam Manohar Nakate, (2005) 2 SCC 489***. The relevant extract of the judgment is reproduced hereunder:

“28. In ***Bhagubhai Balubhai Patel*** [(1976) 1 SCC 518] this Court observed: (SCC p. 523, para 12)

*“In such a case the employee, found guilty, cannot be equated with a victim or a scapegoat and the plea of victimisation as a defence will fall flat. This is why once, in the opinion of the tribunal a gross misconduct is established, as required, on legal evidence either in a fairly conducted domestic enquiry or before the tribunal on merits, the plea of victimisation will not carry the case of the employee any*



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*further. A proved misconduct is antithesis of victimisation as understood in industrial relations. This is not to say that the tribunal has no jurisdiction to interfere with an order of dismissal on proof of victimisation.”*

29. *It was, therefore, obligatory on the part of the respondent to plead and prove the acts of victimisation. He failed to do so.*

30. *Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four corners thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.*

31. *If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.* (Emphasis Supplied)

8. The above-mentioned principles were followed by the Supreme Court in *LIC of India v. R. Dhandapani, (2006) 13 SCC 613*. The relevant extract of the judgment is reproduced hereunder:

*“It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words ‘disproportionate’ or ‘grossly disproportionate’ by itself will not be sufficient. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy,*



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*generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.”*

9. We, therefore, do not find any illegality in the judgment of the Single Bench setting aside the award of the Labour Court and upholding the termination of service of the appellant for unauthorised absence from duty for over 2 ½ years. Consequently, the Letters Patent Appeal stands dismissed.

10. All pending miscellaneous application(s) also stand disposed of.

**(ANUPINDER SINGH GREWAL)  
JUDGE**

**(DEEPAK MANCHANDA)  
JUDGE**

**09.09.2025**

SwarnjitS

Whether speaking/reasoned : Yes / No  
Whether reportable : Yes / No