Reserved On : 29/01/2026
Pronounced On : 09/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12744 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

==========

Approved for Reporting	Yes	No
	Yes	

==========

CHHATRASING SAMSUBHAI BILWAL
Versus
INDIAN PETROCHEMICAL CORPORATION LIMITED & ORS.

==========

Appearance:
MR.J P THAKKAR(7116) for the Petitioner(s) No. 1
MR KM PATEL, SENIOR ADVOCATE ASSISTED BY MR NISARG DESAI WITH MS PRAVALIKHA BATTHINI FOR GANDHI LAW ASSOCIATES(12275) for the Respondent(s) No. 2
RULE SERVED for the Respondent(s) No. 1,3

==========

CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

CAV JUDGMENT

1. Present petition is filed by the petitioner – employee under Articles 226 & 227 of the Constitution of India read with the provisions of the Industrial Disputes Act, 1947 (hereinafter be referred to as "*the Act*") against the judgment and award dated 20.09.2019 passed by the learned Presiding Officer, Labour Court, Vadodara (hereinafter be referred to as "*the Labour Court*") in Reference (LCV) No. 557 of 2003, whereby, the learned Judge has rejected the reference filed by the petitioner-employee and refused to reinstate the petitioner-employee with back wages in service of the respondent-Company.

2. Facts giving rise to present petition in nut-shell are as under :

2.1 The petitioner was employed as Junior Fireman in the respondent-Company on 25.09.1989, which was formerly known as Indian Petrochemical Corporation Limited (IPCL), solely owned by Union of India and managed and administered by Ministry of Petroleum of Central Government. That, the petitioner was confirmed in service and made permanent in the year 1989. That, the petitioner was discharging his duty honestly and with utmost loyalty to the respondent-Company. That, somewhat in the year 2002, the Reliance Industry purchased the equity share in IPCL to the tune of 26.64%, while implementing the disinvestment program of the Central Government and thereafter, purchased 20% of the equity share from the market through SEBI and in all 46.64% equity share were acquired by RIL, hence, there was a change in the management and Shri Mukeshbhai D. Ambani became the Chairman of IPCL. That, thereafter, Merger Agreement took place between IPCL and RIL on 06.03.2007, by which, the IPCL was merged into RIL, wherein, all the service conditions of all the employees of IPCL were agreed to be protected.

2.2 It is the case of the petitioner that, after the change in the management of IPCL in 2002, as stated above, by way of malicious strategy, an unfair labour practice was adopted by the respondent-Company and as the respondent wanted to diminish / reduce the staff, by way of policy the respondent Management started to harass the employees and under one or another created grounds, number of employees were picked up for the purpose of removal from service. As a part of that policy, hundreds of employees were served with the

departmental charge-sheets alleging that in the year 2001 or in any other year, the employee remained absent for a period of 40 days, 50 days and 60 days, 90 days etc. That, the Petitioner was also served with the similar type of charge-sheet dated 28.05.2002 alleging that the petitioner remained absent without leave for a total period of 92 days in different months of the year 2001.

2.3 The petitioner filed the reply to the said charge-sheet on 01.06.2002 wherein, the said absent was explained by saying that the brother of petitioner was suffering from mantel illness since last six years and due to which, many a times he was found missing from home and such types of incidents used to occur many a times in the family, due to which, old aged Senior citizen parents were also suffering from similar mental torture, pain and agony and the present petitioner was the only person who could take care of the family and such ill-person. That, the petitioner was the only bread earner and healthy person in the family and due to such types of incidents, there was compelling necessity and demand of time, to remain with them in the family and to take care of them and therefore, as and when the family members were calling the petitioner, on emerging the serious health problem to the family member, the petitioner was inclined to immediately rush to native place, where the family was residing.

2.4 That, on filing the said reply, the petitioner was neither called upon to adduce any evidence for the same nor given any opportunity to give a further explanation of the said absence, for which, at the different occasions, the petitioner had applied to the Competent Authority or to the Superior Officer for leave and non-sanction, if any, was never communicated to the petitioner but, the respondent

management as a part of policy to have a mass removal of employees, chosen to hold the departmental inquiry and appointed the Inquiry Officer as well as Presenting Officer by order dated 06.07.2002. That, thereafter, by the letter dated 16.07.2002, the Inquiry Officer fixed the date of preliminary inquiry and called upon the petitioner to remain present on 25.07.2002. That, the petitioner remained present on the said stipulated dated for preliminary inquiry wherein, the petitioner was not afforded any opportunity to defend the charge-sheet or the proceedings and straight way Inquiry Officer put some preliminary questions to the petitioner that, whether the petitioner was accepting the allegation that he remained absent for 92 days in the year 2001?, quo which the petitioner replied that he remained absent was the true facts and he admitted the same. Even the Inquiry Officer had further put the question to the petitioner to the effect that as to why for such different 92 days the petitioner remained absent in the year 2001 without leave?. The petitioner on such preliminary questionary from the Inquiry Officer, explained and replied that his old aged parents and younger brother were living in Native place i.e. village Dabada of district Panchmahal and all such family members were the dependents on the petitioner and the younger brother Shri Balvantbhai of the petitioner was suffering from severe mental diseases since last six years and because of such mental illness of the younger brother, the old aged parents were also being harassed and mentally disturbed and thereupon, whenever the occasion of serious illness of the younger brother and the father arisen, the mother was used to call the petitioner to help them for the purpose of medical treatment and to carry them to the hospital for medical treatment, in as much as there was no other person who can discharge such social obligation and to save the family members from

such severe mental disease, and in the circumstances, it was not practically possible for the petitioner to have any prior leave as the petitioner was to rush immediately on receiving the message from the mother or the family members. Thus, such reasonable cause and reason were also pointed out to the Inquiry Officer during the course of preliminary inquiry which took place on 25.07.2002.

2.5 That, the Inquiry Officer considered the aforesaid episode happened on the said date i.e. on 25.07.2002 before him, as an admission of guilt or charges by the petitioner and chosen to terminate the inquiry proceedings without affording any opportunity to defend the charge-sheet or a charged leveled against the petitioner. That, nobody was examined on behalf of the respondent-Company to prove the charges leveled against the petitioner, nor even the petitioner was permitted to get himself examined to disprove the charges. That, the Inquiry officer adopted the procedure like police investigation by putting such preliminary questions and the same was construed to have an admission on the part of the petitioner, and on that ground, the Inquiry officer terminated the inquiry proceedings and prepared the report and submitted the same to the Disciplinary Authority reporting to the effect that charges leveled against the petitioner by charge-sheet dated 28.05.2002 was proved because of an admission on the part of the petitioner and thereby, the petitioner had violated the standing order Section-18 (28). That, considering the said Inquiry Report of the Inquiry Officer, the Disciplinary Authority of the respondent-Company chosen to pass an order of termination / discharge, discharging the petitioner from service by inflicting the penalty by order dated 14.03.2003.

2.6 That, the said termination order was challenged by raising the dispute before the Assistant Labour Commissioner under Section 10 of the Act, which was to the Labour Court, Vadodara and was registered as Reference Case No.557 of 2003. That, the petitioner filed the Statement of claim before the Labour Court and sought for a relief of setting aside the termination order and also sought for a relief of reinstatement with full back wages. That, the respondent-Company filed the reply to the said statement of claim before the Labour Court. That, the Labour Court thereafter, tried the different issues and dismissed the reference of the petitioner on different grounds vide judgment and award dated20.09.2019.

3. Being aggrieved and dissatisfied with the impugned judgment and award dated 20.09.2019 passed by the learned Presiding Officer, Labour Court, Vadodara in Reference (LCV) No. 557 of 2003, the petitioner has preferred this petition under Articles 226 & 227 of the Constitution of India read with the provisions of Industrial Disputes Act, 1947.

4. Heard Mr. Prakash Thakkar, learned counsel appearing virtually for the petitioner-employee and Mr. K.M. Patel, learned senior counsel assisted by Mr. Nisarg Desai and Ms. Pravalikha Batthini, learned counsels appearing for the respondent No.2-IPCL.

5. Learned counsel Mr. Thakkar has submitted that the impugned judgment and award passed by the Labour Court is illegal, unjust, arbitrary, erroneous and contrary to the facts and material on record and the provisions of the Act and therefore, the same is required to be quashed and set aside. He would submit that the statement made on

behalf of the petitioner was not properly considered and appreciate by the Labour Court while passing the impugned award, which is the subject matter in this petition. He would further submit that the petitioner was terminated on account of unauthorized absence for a period of 92 days, for which, charge sheet (Annexure-B) was issued to the petitioner and the petitioner had filed his reply to the said charge sheet (Annexure-C) wherein, the petitioner has tried to explain that the charge mentioned in the charge sheet is admitted by him, however, in addition to that, he wanted to explain that his mother was residing alone with his younger brother and both were dependent upon the petitioner and the younger brother was suffering from mental illness and because of that reason, he used to frequently visit his native village Dabada of district Panchmahal and therefore, he used to remain absent without seeking any prior permission and there was no any intention on the part of the petitioner to remain absent and under such circumstances, the charges were proved against the petitioner, however, without considering these facts, the Labour Court has committed a serious error in referring and relying upon past incident / antecedent for which, there was no any show-cause notice issued against the petitioner and thus, while relying upon the prior antecedent, the Labour Court has committed a serious error of law and facts. He would further submit that the earlier antecedent at page-76 of the compilation, which is referred and relied upon by the Labour Court from the reply filed by the respondent before the Labour Court, for which the respondent had not issue any show-cause notice, the same cannot be treated as relevant material while deciding the reference as antecedent as there was no departmental proceedings held for the earlier antecedents and therefore, under such circumstances, the impugned award passed by the Labour Court is

erroneous, illegal, unjust and arbitrary and in violation of principles of natural justice.

5.1 Learned counsel Mr. Thakkar has referred and relied upon the rejoinder filed by the petitioner and submitted that in the charge sheet, there was no whisper about the fact that the petitioner was a habitual absentee and he had remained unauthorizedly absent from the duty for the period from 1991 to 2001, nor any evidence was led before the Inquiry Officer in the departmental proceedings to that effect, nor any show-cause notice for penalty was conveyed regarding the past record, nor the impugned order of penalty was reflecting the reliance of any past record of alleged habitual absence for the period from 1991 to 2201 and, it was for the first time before the Labour Court, the fresh and additional evidence and new ground for inflicting the impugned penalty of termination of service was created by the respondent-Company, which is not permissible in view of proviso to Section 11A of the Act, which relates to powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen, and therefore, the observation made by the Labour Court relying upon prior antecedents is completely erroneous, illegal and unjust. He has further submitted that the Labour Court has not appreciated the fact that the standing order No.18(28) is contemplating the deliberate unauthorized absent without leave, while the petitioner was under the compelled circumstances which were beyond his control and could not attend the duty, therefore, such absenteeism cannot be construed as deliberate one and therefore, the action or inaction on the part of the petitioner is not falling within the definition of misconduct in view of standing order No.18(28) of the respondent-Company and therefore,

the penalty order is illegal and bad in law. Over and above, the grounds agitated in the memo of petition, learned counsel Mr. Thakker has urged that the impugned judgment and award passed by the Labour Court is required to be quashed and set aside and the present petition is required to be allowed.

5.2 In support of his submissions, learned counsel Mr. Thakkar has referred and relied upon the decision of the Hon'ble Apex Court rendered in case of **Mohd. Yunus Khan vs. State of Uttar Pradesh**, reported in **[2010] 10 SCC 539**, the relevant observations made in paras-36 and 37. He has also referred and relied upon the decision of this Court in case of **Parshottam Rajabhai vs. State of Gujarat**, reported in **[1994] 1 GLR 93**, the relevant observations made in para-5. So far as the scope and powers of Labour Court under Section 11A of the Act is concerned, learned counsel Mr. Thakkar has referred and relied upon the decision of Andhra Pradesh High Court in case of **A.V. Swami vs. Industrial Tribunal-cum-labour Court, Warangal**, reported in **[1991] 2 LLJ 430**, the relevant observations made in para-5. So far as the contention with regard to misconduct is concerned, learned counsel Mr. Thakkar has referred and relied upon the decision of the Hon'ble Apex Court rendered in case of **Krushnakant B. Parmar vs. Union of India**, reported in **[2012] 3 SCC 178**, the relevant observations made in paras-16, 17, 18, 19, 20, 22, 23 and 24.

6. On the other hand, Mr. K.M. Patel, learned senior counsel appearing for the respondent No.2, has opposed the present petition and submitted that petitioner is not entitled to any relief as sought for under Articles 226 & 227 of the Constitution of India as he has

challenged the proportionality of the punishment imposed upon him and now, it is well settled that while deciding the proportionality of the punishment imposed by the Inquiry Officer and confirmed by the Disciplinary Authority as well as by the Labour Court, this Court has very limited scope to interfere with the findings recorded by the authorities as this Court is not sitting in an appeal over the decision of the Inquiry Officer or the Disciplinary Authority. He has submitted that in the case on hand, the charge sheet was issued against the petitioner and he had accepted the charges lvelled against him in his written explanation given to the Inquiry Officer and therefore, now, it is not open for the petitioner to challenge the legality and validity of the charge sheet, as it is borne out from the record that the petitioner had remained absent for about 92 days in the year 2001 and every time, he had remained absent without seeking prior permission and without there being any leave sanctioned by the authority, as contemplated under the standing order no.18(28), and is considered to be a serious misconduct, which is mentioned in the show-cause notice itself.

6.1 Learned senior counsel Mr. Patel has submitted that it was admitted by the petitioner that he had not sought any prior permission from the authority nor his leave was sanctioned by the authority and therefore, he cannot challenge the legality and validity of the report of the Inquiry Officer or the order passed by the Disciplinary Authority. He has further submitted that the petitioner was serving as a Junior Fireman having the responsibility in the Establishment / Organization, which is a petrochemical unit processing hazardous chemicals day-in and day-out for the refinery, which is highly inflammable and therefore, Fire Officer / Junior Fire

Officer and Fire Department have to remain vigilant and present 24 hours for 365 days. He has submitted that the petitioner cannot remain absent like a labourer without any prior intimation or prior permission of the authority as he is not a class-IV employee and therefore, under such circumstances, considering the nature of duty and the position he is holding in the establishment, he cannot say that due to family situations, he had to rush to his native place without seeking any prior permissions in haste and he remained absent for number of days unauthorizedly, therefore, considering all these aspects, the Inquiry Officer, after following due procedure and after considering the written reply filed by the petitioner and after affording personal hearing, has prepared the report and relying upon the same, the Disciplinary Authority has passed the order of termination. He has further submitted that even if this Court ignores the past conduct of the petitioner, though it is relevant to decide the present petition, however, for the time being, if this Court ignores, then also, the petitioner being a Junior Fireman and considering the nature of work which is allotted, the petitioner cannot remain absent unauthorizedly for the period mentioned in the charge sheet, which is wholly illegal and unjust on the part of the petitioner and he cannot expect from the establishment to condone his absence. He has further submitted that even the legality and validity of the inquiry report and the order passed by the Disciplinary Authority were not challenged, however, the petitioner has challenged the order passed by the Disciplinary Authority before the Central Revisional Authority and Central Administrative Authority and both the authorities have confirmed the order passed by the Disciplinary Authority, after considering the facts of the case and after considering the submissions advanced by the petitioner before the Disciplinary Authority, as it was against the

concurrent findings of fact recorded by the Inquiry Officer, after going through the records and after verifying the veracity and legality, which was confirmed by the Disciplinary Authority, which was the subject matter before the Labour Court and after considering the relevant facts, the Labour Court has observed that while exercising powers under Section 11A of the Act, the scope and nature of power, the court is not sitting over the appellate jurisdiction and therefore, the Labour Court after considering all the relevant material has rightly passed the impugned award. Learned senior counsel Mr. Patel has therefore, urged that no interference is required to be called for in the present petition and the present petition be dismissed.

6.2 In support of his submissions, learned senior counsel Mr. Patel has referred and relied upon the following decisions of the Hon'ble Apex Court as well as this Court :

[I] **L & T Komatsu Ltd. vs. N. Udayakumar, [2008] 1 SCC 224**, relevant paras-5, 6, 8 to 11;

[II] **Chairman and M.D.V.S.P. vs. Goparaju Sri Prabhakara, [2008] 5 SCC 569**, relevant paras-16 to 21;

[III] **Delhi Transport Corporation vs. Sardar Singh, [2004] 7 SCC 574**, relevant paras-2,9 and 11;

[IV] **Satnam Singh vs. Pepsu Road Transport Corporation, [2017] 153 FLR 536**, relevant paras-3 and 4;

[V] **Maganbhai L. Chauhan vs. Divisional Controller GSRTC, [1999] 1 GLH 527**, relevant paras-3, 4, 5 and 9;

[VI] **Ahmedabad Municipal Transport Service vs. Vinubhai J. Ghanchi, Special Civil Application No. 6632 of 2003**, decided on 11.05.2011, relevant paras-4 to 7;

[VII] **Shriraj A. Vora vs. IPCL, Special Civil Application No.**

16857 of 2013, decided on 22.12.2014, relevant paras-4.1, 4.2 and 5.

7. I have heard the learned counsel appearing for the respective parties and perused the material placed on record. The issue involved in the present petition is that as to whether the Labour Court has committed any error while passing the impugned award dismissing the reference preferred by the present petitioner; whether the Labour Court has exceeded its jurisdiction while examining the legality and validity of the order of punishment passed by the Disciplinary Authority and confirmed by the Revisional Authority and further confirmed by the Administrative Authority of the respondent while exercising jurisdiction under Section 11A of the Act; whether the Labour Court can examine and refer and rely upon earlier antecedents of similar in nature or the misconduct committed by the petitioner.

8. Before dwelling into all these aspects, the facts of the case are required to be looked into. It emerges from the records that the petitioner was appointed as a Junior Fireman in the respondent-Company i.e. IPCL, who was engaged in manufacturing process of hazardous chemicals and there are all likelihood to occur untowards incidents at anytime and therefore, the Fire Department was having a vital role to play, wherein, the petitioner was working as a Junior Fireman since 1989. It is alleged that the petitioner remained unauthorizedly absent from duty, which is against the provisions of standing order no.18(28) of the respondent-Company and therefore, the respondent-Company had issued charge sheet dated 28.05.2002 alleging that the petitioner had remained unauthorizedly absent

without leave for a total period of 92 days in different months in the year 2001 as under :

Sr. No.	Month	Total number of days absent
1.	January	-
2.	February	01
3.	March	12
4.	April	08
5.	May	11
6.	June	07
7.	July	3.5
8.	August	08
9.	September	8.5
10.	October	10
11.	November	07
12.	December	16
	Total	**92**

8.1 It appears that every time, the petitioner had neither informed the authority nor any prior permission was sought for leave nor his leave was sanctioned on any of the occasions. Even the petitioner has admitted in his reply that he was not challenging the legality and validity of the charge sheet and he has admitted the charges levelled against him before the Inquiry Officer. Even considering the deposition of the petitioner before the Inquiry Officer, which was recorded on 25.07.2002 (Annexure “F”), which is reproduced hereunder :

Question :	*Have you received the charge sheet given to you on 28/05/2002 and have you understood it properly ?*
Answer :	*Yes, I have received the charge sheet and I have understood it properly as well.*

Question :	*For this departmental inquiry, do you wish to present a co-worker or, if you are a member of a union, a union member as a defense representative ?*
Answer :	*No, I do not wish to present a co-worker or a union member as a defense representative for this departmental inquiry. I myself will give the answers to the questions regarding this.*
Question :	*What is the reason for the unauthorized absence of 92 days in the year 2001 shown in the charge sheet ?*
Answer :	*My mother, father, and younger brother reside at my native place in Dabada Village, Dist. Panchmahal. They are all dependent on me. Since my younger brother (Mr. Balvantbhai) is suffering from mental illness, he has to be taken to the hospital frequently, and therefore, my father also faces hardship due to this and he himself also suffers from mental illness. Therefore, my mother calls me to the native place frequently and I could not come to work for that reason which led to my unauthorized absence.*
Question :	*Since how long has your brother been suffering from a mental illness ?*
Answer :	*My younger brother has mental illness for the last six (6) years.*
Question :	*Have you taken any doctor's treatment for your younger brother in your native place in this regard ? Where have you taken it ?*
Answer	*Yes, doctor's treatment has been taken, and for his treatment, I have taken him to Dr. Sharma in Limkheda village.*
Question :	*Did you submit the medical certificate of your brother's treatment to your superior officer regarding the fact that you remained absent since you went to your village for your brother's treatment ?*
Answer :	*I have not submitted the medical certificate regarding this to my superior officer.*
Question :	*Why have you not submitted the medical certificate in this regard ?*
Answer :	*I should have submitted the medical certificate in this regard, but I have not submitted it, which is my fault.*
Question :	*You have remained absent in an unauthorized manner even six (6) years ago, what is the reason behind it ? Your duty is in the Fire Service and since it is your essential duty, you have to remain present. Do you know that ?*

Answer :	*Prior to this, I often did not feel like coming to work mentally, and due to this reason, there is my unauthorized absence.*
Question :	*Do you admit that you have remained absent in an unauthorized manner for 92 days as shown in the charge sheet given to you ?*
Answer :	*Yes, I admit the unauthorized absence of 92 days. I give an assurance that, I will not remain absent in an unauthorized manner hereafter, and if I have to go on leave, I will intimate regarding it to my department. I give assurance that, I will not make such mistake in the future and if possible, kindly forgive me.*
Question :	*Presenting Officer and Delinquent, do you have anything further to say regarding this departmental inquiry ?*
Answer :	*In this regard, the delinquent replies : No, now both of us have nothing to say further regarding this departmental inquiry.*

8.2 The Inquiry Officer, after considering the written explanation and after recording the statement of the petitioner and after considering the provisions of standing order no.18(28) of the respondent-Company, has prepared the report dated 28.08.2002, which was approved by the Senior Fire Service Manager and Disciplinary Authority, which was challenged before the Revisional Authority and further challenged before the Administrative Authority and both the authorities have confirmed the order of termination passed by the Disciplinary Authority and therefore, naturally, the petitioner has preferred reference under Section 10(1) of the I.D. Act challenging the order of Disciplinary Authority based upon the inquiry report, which was subsequently confirmed by the Labour Court by rejecting the reference and therefore, the Labour Court has rightly refused to exercise powers under Section 11A of the, Act as the Labour Court is not sitting over the appeal for the findings recorded by the Inquiry Officer based on facts and the relevant material produced before it. It is pertinent to note herein that, the petitioner had challenged the legality and validity of the inquiry proceedings by

way of filing an application (Exh.-18) before the Labour Court, wherein, the Labour Court vide order dated 09.08.2017 has held that the inquiry conducted by the respondent-Company is valid and legal and is in consonance with the principles of natural justice.

8.3 In the facts and circumstances of the present case, if this Court ignores the earlier antecedents of the petitioner of remaining absent, then also, even for the very year 2001, the petitioner had remained unauthorizedly absent for a period of 92 days without there being any prior permission, which is a serious misconduct on the part of the petitioner and therefore, the Labour Court has rightly passed the impugned award, for which, the contention raised by the learned counsel Mr. Thakkar that earlier antecedents cannot be looked into by the Inquiry Officer as the respondent-Company has not issued any charge sheet for the earlier antecedents and therefore, that cannot be referred and relied upon. At this juncture, it would be appropriate to refer to the decision of the Hon'ble Apex Court rendered in case of **Union of India and Others vs. Bishamber Das Dogra**, reported in **[2009] 13 SCC 102**, the relevant observations made in para-30 read as under :

> *"**30**. In view of the above, it is evident that it is desirable that delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require."*

8.4 The Labour Court has rightly observed referring to the written statement filed by the respondent that the respondent has not committed any error while mentioning that from the year 1991 to

2000, the petitioner remained unauthorizedly absent and therefore, he was a habitual absentee for these years. Even otherwise, if this Court considers that the legality and validity of the inquiry was not challenged by the petitioner, however, so far as the proportionality of the punishment is concerned, this Court cannot gone into while exercising jurisdiction under Articles 226 & 227 of the Constitution of India, as to whether the punishment imposed upon the petitioner is disproportionate to the charges levelled against him. In case of **Delhi Transport Corporation (Supra)**, the Hon'ble Apex Court has observed that *absence without leave or continuous absence from duty without sanctioned leave for long prima facie amounts to habitual negligence of duties and lack of interest in the work*, which is a misconduct under the relevant standing order of the respondent-Company, then burden lies upon the employee concerned to prove otherwise by placing relevant material on record. Herein the present case, it is the contention of the petitioner that he cannot be termed as habitual absentee and his earlier antecedents cannot be taken into consideration is not tenable in the eye of law. The relevant observations made in paras-3, 4, 5 and 9 read as under :

> *"**3**. The employer approached the Delhi High Court and learned Single judge of the Court held that the disapproval by the Tribunal was not in order. The concerned employees preferred Letters Patent Appeals before the Delhi High Court. A Division Bench of the Court by the impugned judgment disposed of several L.P.As. being of the view that the Tribunal's conclusions were in order and the learned Single Judge was not correct in his conclusions.*
>
> ***4**. In support of the Appeals learned counsel for the appellant- employer Corporation submitted that the Division Bench of the High Court has missed to notice the true effect of paras 4(ii) and 19(h) of the Standing Orders. Erroneously it was concluded that leave without pay meant grant of leave. It is nothing but keeping the record straight and for the purpose of maintaining correct record of service. It did not amount to sanction of leave. The Standing Order clearly stipulates that the leave was to be obtained in advance. Above being the position, the Division Bench was not*

justified in interfering with the orders of the learned Single Judge.

***5**. In response, learned counsel for the concerned employees submitted that where the record shows that the absence was treated as leave without pay, it meant that leave was granted and mere long absence does not per se show lack of interest in work, something more was necessary for the purpose and the Tribunal therefore was justified in its view.*

***9**. When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings."*

8.5 Recently, this Court had an occasion to consider the identical issue with regard to unauthorized absence in case of **Keshavbhai Juthabhai Jethwa vs. Tourism Officer, Gujarat Tourism Corporation Ltd. and Ors.**, in **Special Civil Application No. 20708 of 2018**, decided on 18.09.2024, wherein this Court, after considering the relevant provisions of the Corporation and after considering the decisions of the Hon'ble Apex Court as well as this Court cited before the Court, has passed the order dismissing the petition. So far as the scope and power of judicial review of the discretion exercised by the employer to impose the particular penalty on the delinquent employee is concerned, the Supreme Court has repeatedly emphasized that the High Courts or the Tribunals cannot exercise appellate jurisdiction in such matters and substitute their opinion for the one formed by the disciplinary authority. It has been held that the punishment imposed by the competent authority cannot

be modified / substituted with a lesser penalty unless the Court is satisfied that the same is grossly or shockingly disproportionate or is so unreasonable that no person of reasonable prudence would have imposed such punishment in the facts and circumstances of the case.

8.6 It is also worthwhile to refer to the decision of this Court in the case of **Pradeepkumar Thakur vs. State Bank of India and 1 other**, reported in **[2024] 2 GLH 149**, wherein this Court has held and observed as under :

> *"**10**. It is also worthwhile to refer to the judgment of the Division Bench of this Court dated 06.01.2014 rendered in Letters Patent Appeal No.915 of 2013 wherein the Division Bench has observed in para-7 as under:-*
>
> *"7. It is a settled proposition of law by a catena of judgments of the Apex Court that the Court cannot usurp the jurisdiction of disciplinary authority and decide the quantum of punishment. The principle governing judicial review of punishment inflicted on the delinquent by the disciplinary authority can be summed up as under;*
>
> *(a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;*
>
> *(b) The Courts cannot assume the function of disciplinary / departmental authorities and to decide nature of function the quantum penalty is to be of punishment awarded, exclusively as within and this the jurisdiction of the competent authority;*
>
> *(c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;"*
>
> ***11**. It is also worthwhile to refer to the decision of this Court in the case of C S. Amin Vs. Assistant General Manager SBI, Region III & 2 reported in 2016 LawSuit (Guj) 1916 and Bhikhubhai Kamabhai Dabhi Vs. Surat Municipal Corporation and 2 reported in 2017 LawSuit (Guj) 9 where in this Court has decided similar issue as involved in the present petition.*
>
> ***12**. In the case of C. S. Amin (supra), this Court has held and observed in paras – 29, 30 and 31 as under:-*
>
> *"29. I may quote the observations of the Division Bench as under:- The doctrine of proportionality and Wednesbury rule evolved in England in*

Council of Civil Services Union Vs. Minister for Civil Services (1983) 1 AC 768 and Associated Provincial Picture Houses Limited Vs. Wednesbury Corporation - 1948 2 All ER 680 have been applied by the Courts in India in various decisions. In Union of India Vs. C.G. Ganayutham - AIR 1997 SC 3387, the Supreme Court considered the ambit and scope of the doctrine of proportionality and Wednesbury rule in the light of various judicial pronouncements and laid down the following propositions: "

(1) To judge the validity of any administrative order or statutory discretion normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bonafide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3)(a) As per Bugdaycay, Brind and Smith, as long as the European Human Rights Convention (Contention) is not incorporated into English Law, the English Courts merely exercise a secondary judgement to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgement on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country in administrative law, where no fundamental freedoms are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgement as to reasonableness will remain with the executive or administrative authority. The secondary judgement of the Court is to be based on Wednesbury the CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting

fundamental freedoms, the Courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms."

In Apparel Export Promotion Council Vs. A.K. Chopra - (1999) 1 SCC 759, the Supreme Court reiterated the otherwise well settled principles of law on the scope of judicial review of disciplinary action taken by the employer and laid down the following propositions:-

"*It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even in so far as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.*

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgement for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

In Om Kumar Vs. Union of India - AIR 2000 SC 3689, the Supreme Court traced the history of the principle of proportionality, referred to the propositions culled out in Ganayutham's case (supra), noticed the decision of the House of Lords in R. Vs. Chief Constable of Sussesc ex.p. International Trader's Ferry Ltd. (1999) 1 All ER 129, wherein the principles of Wednesbury and proportionality were almost equated and held that where the decision of an administrative authority is attacked being arbitrary, the principle of secondary review will have to be kept in mind. Paragraphs 28, 29 66 to 71 of this judgement which theortises the law on the subject are reproduced below:

"*28. By 'proportionality' we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the Legislature or the Administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the Legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties, or interests of persons keeping in mind the purpose which they were intended to serve. The Legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality.*"

"*29. The above principle of proportionality has been applied by the European Court to protect the rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and in particular, for considering whether restrictions imposed were restrictions which were 'necessary' - within Arts.8 to 11 of the said Convention (corresponding to our Art. 19(1) and to find out whether the restrictions imposed on fundamental freedoms were more excessive than required. (Handyside V. UK (1976) 1 EHR p.737) Articles 2 and 5 of the Convention contain provisions similar to Art. 21 of our Constitution relating to life and liberty. The European Court has applied the principle of proportionality also to questions of discrimination under Art. 14 of the Convention (corresponding to Art.14 of our Constitution). (See European Administrative Law by J. Schwaze, 1992. Pp.677- 866).*"

"*66. It is clear from the above discussion that in India where administrative action is challenged under Art.14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the Administrator. Here the Court deals with the merits of the balancing action of the Administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority.*"

"*67. But where, an administrative action is challenged as 'arbitrary' under Art. 14 on the basis of Royappa (as in cases where punishments in*

disciplinary cases are challenged), the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the Administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors in to consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. (In G.B. Mahajan V. Jalgaon Municipal Council (1991) 3 SCC 91 at p. 111 :(AIR 1991 SC 1153 at . 1165), Venkatachaliah, J. (as he then was) pointed out that 'reasonableness' of the Administrator under Art. 14 in the context of Administrative Law has to be judged from the stand point of Wednesbury rules. In Tata Cellular V. Union of India (1994) 6 SCC 651 at Pp. 679- 680: (1994 AIR SCW 3344 and at Pp.3369-70 In Regional Manager U.P. SRTC V. Hoti Lal, (2003) 3 SCC 605, the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:: AIR 1996 SC 11); Indian Express Newspapers Vs. Union of India (1985) 1 SCC 641 at p.691: (AIR 1986 SC 515 at Pp.542- 43): Supreme Court Employees' Welfare Association V. Union of India (1989) 4 SCC 187 at p.241 : (AIR 1990 SC 334 at p.368: 1990 Lab IC 324 at p.358) and U.P. Financial Corporation V. GEM CAP (India) Pvt.Ltd. (1993) 2 SCC 299, at p. 307: (1993 SC 1435 at p.1439), while judging whether the administrative action is 'arbitrary' under Art.14 (i.e.otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always."

"*71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Art.14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Art.14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the Administrator for a fresh decision as to the quantum of punishment. Only in rate cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and (in) such extreme or rate cases can the Court substitute its own view as to the quantum of punishment.*"

In Regional Manager U.P. SRTC V. Hoti Lal (2003) 3 SCC 605, the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

"*The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons*

amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go in to the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional." (underlining is ours)

In Director General, RPF V. Ch. Sai Babu (2003) 4 SCC 331, the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

"*Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department / establishment in which the delinquent person concerned works.*"

30. The above noted decision of this Court gives a clear idea of the limited scope of judicial review of the discretion exercised by the employer to impose the particular penalty on the delinquent employee. The Supreme Court has repeatedly emphasised that the High Courts cannot exercise appellate jurisdiction in such matters and substitute their opinion for the one formed by the disciplinary authority. It has also been held that the punishment imposed by the competent authority cannot be modified/substituted with a lesser penalty unless the Court is satisfied that the same is grossly or shockingly disproportionate or is so unreasonable that no person of reasonable prudence would have imposed such punishment in the facts and circumstances of the case.

31. For determination of the question whether the punishment imposed by the disciplinary authority is grossly or shockingly disproportionate, the Court has to take into consideration all the relevant factors including the nature of charges proved, the past conduct of the employee, the punishment if any imposed earlier, the nature of duties assigned to the employee having due regard to their sensitiveness, performance norms if any laid down by the employer and above all the paramount requirement of maintaining discipline in the service."

***13**. In the case of Bhikhubhai Kamabhai Dabhi (supra), this Court has held and observed in paras – 17, 18 and 21 as under:-*

"17. It is now well settled by a plethora of judgments of the Supreme Court that in exercise of its powers under Articles 226 and 227 of the Constitution of India should not venture into the reappreciation of evidence or interfere with the conclusion arrived at by the disciplinary authority in the inquiry proceedings, if the same are conducted in accordance with law or go into the reliability / adequacy of evidence, or interfere, if there is some legal evidence on which the findings are based, or correct error of fact however grave it may be, or go into the proportionality of punishment unless it shocks the conscience.

18. It is equally well settled that the High Courts in exercise of its powers under Articles 226 and 227 can only consider whether the inquiry held by the competent authority was in accordance with the procedure established by law, and the principles of natural justice,whether irrelevant or extraneous consideration and/or exclusion of admissible or material evidence or admission of inadmissible evidence being influenced the decision rendering it vulnerable.

21. In a very recent pronouncement in the case of Union of India and others v. P. Gunasekaran [2015(2) SCC 610], the Supreme Court in details has explained the position of law so far as the scope of interference in the matter relating to the disciplinary proceedings is concerned. I may quote the observations made by the Supreme Court from paras 12 to 20 as under:

"12. Despite the well settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re- appreciating even the evidence before the enquiry officer. The finding on Charge No. 1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a). the enquiry is held by a competent authority;

(b). the enquiry is held according to the procedure prescribed in that behalf;

(c). there is violation of the principles of natural justice in conducting the proceedings;

(d). the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e). the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f). the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such

conclusion;

(g). the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h). the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i). the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). reappreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based;

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree Rama Rao1, many of the above principles have been discussed and it has been concluded thus:

"7. .....The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be

influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. In State of Andhra Pradesh and others v. Chitra Venkata Rao [(1975) 2 SCC 557], the principles have been further discussed at paragraphs 21 to 24, which read as follows:

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao (AIR 1963 SC 1723). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, representing the Union of India, New Delhi v. Niranjan Singh (AIR 1969 SC 966) said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable

person could have reached such a finding. In Niranjan Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan (AIR 1964 SC 477).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

16. These principles have been succinctly summed up by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another v. Rattan Singh [(1977) 2 SCC 491]. To quote the unparalled and inimitable expressions:

"4. ..... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ....."

17. In all the subsequent decisions of this Court up to the latest in Chennai Water Supply and Sewarage Board v. T. T. Murali Babu (2014) 4 SCC 108 : (AIR 2014 SC 1141), these principles have been consistently followed adding practically nothing more or altering anything.

18. On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:

"Article was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.92 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.92 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.92 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ...."

19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India. 20 Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility,

irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

8.7 The standing order no.18(28) of the respondent-Company reads thus :

*"**18. Misconduct :***
*(**28**) Repeated absence without leave or absence for more than 12 consecutive days without leave or excessive absence or absence even after approved leave without satisfactory explanation."*

8.8 In case of **L & T Komatsu Limited vs. N. Udayakumar**, reported in **[2008] 1 SCC 224**, the Hon'ble Apex Court has observed that what circumstances are to be kept in mind by the High Courts or the Labour Courts or the Tribunals while exercising powers under Section 11A of the Act, the relevant observations made in para-6 onwards, wherein, the Hon'ble Apex Court has clarified with regard to the scope and power of the courts while interfering with the order of punishment imposed by the Disciplinary Authority and subsequently, confirmed by the Appellate Authority, which was again reiterated in case of **Chennai Metropolitan Water Supply and Sewerage Board vs. T.T. Murali Babu**, reported in **[2014] 4 SCC 108**, more particularly in paras-19, 21 and 22 and thus, in the present case, considering the totality of facts, the Labour Court has not committed any error while dismissing the reference and no interference is required to be called for in the present petition.

9. On perusal of the inquiry report of the inquiry officer and the order of the disciplinary authority, I am of the opinion that the punishment of dismissal inflicted on the petitioner vis-a-vis the proven misconduct is not so disproportionate as would shock the conscience of this Court warranting interference. Considering the totality of facts,

I am of opinion that the authorities have rightly arrived at the conclusion that the petitioner was guilty of misconduct, which was sufficient to remove him from the service. This Court finds no reasons to interfere with the same either.

10. Considering overall facts and circumstances of the case and the decisions of the Hon'ble Apex Court as well as this Court, I am of the opinion that, the present petition being devoid of any merits, deserves to be dismissed.

11. In the result, the petition stands dismissed. The impugned award passed by the Labour Court is hereby confirmed. Rule is discharged. There shall be no order as to costs.

(HEMANT M. PRACHCHHAK,J)

Dolly