(2014) 4 ESC 560 : (2014) 143 FLR 469 : (2015) 1 JLJR 78 : (2014) LabIC 4266 : (2014) 4 LLJ 171 : (2014) 3 LLN 545 : (2014) LLR 1075 : (2015) 2 MhLj 107 : (2015) 2 MPHT 411 : (2015) MPLJ 632 : (2015) 1 PLJR 145 : (2014) 10 SCALE 135 : (2014) 10 SCC 301 :

Supreme Court of India

Case No: Civil Appeal No. 8434 of 2014 (Arising out of SLP (C) No. 22487 of 2012)

Raghubir Singh — APPELLANT

Vs

General Manager,Haryana Roadways — RESPONDENT

Date of Decision: Sept. 3, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 12, 136, 14, 16, 19#Haryana Civil Services (Punishment and Appeal) Rules, 1987 â€" Rule 7#Industrial Disputes Act, 1947 â€" Section 10(1), 11A, 2#Limitation Act, 1963 â€" Article 137#Penal Code, 1860 (IPC) â€" Section 409

Citation: (2014) 4 ESC 560 : (2014) 143 FLR 469 : (2015) 1 JLJR 78 : (2014) LabIC 4266 : (2014) 4 LLJ 171 : (2014) 3 LLN 545 : (2014) LLR 1075 : (2015) 2 MhLj 107 : (2015) 2 MPHT 411 : (2015) MPLJ 632 : (2015) 1 PLJR 145 : (2014) 10 SCALE 135 : (2014) 10 SCC 301 :

Hon'ble Judges: V. Gopala Gowda, J; Sudhansu Jyoti Mukhopadhaya, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

JUDGMENT

1. Leave granted.

2. This appeal has been filed by the Appellant against the order dated 09.01.2012 passed by the High Court of Punjab and Haryana at

Chandigarh in L.P.A. No. 20 of 2012, whereby the High Court dismissed the L.P.A. and affirmed the order dated 14.11.2011 passed by the

learned Single Judge of the High Court in the C.W.P. No. 20996 of 2011, urging various grounds.

3. The necessary relevant facts are stated hereunder to appreciate the case of the Appellant and to ascertain whether the Appellant is entitled for

the relief as prayed in this appeal.

In 1976, the Appellant joined the Haryana Roadways as a conductor. On 10.08.1993, the Appellant was charged u/s 409 of the Indian Penal

Code in a criminal case at the instance of the Respondent for alleged misappropriation of the amount collected from tickets and not depositing the

cash in relation to the same in time. The Appellant was arrested by the Jurisdictional police and sent to judicial custody on 15.09.1994. Further, on

21.10.1994 the services of the Appellant were terminated by the General Manager, Haryana Roadways, Hissar, the Respondent herein. On

15.11.1994, the Appellant upon being released on bail was given an oral assurance by the Respondent that he will be reinstated to the post after

his acquittal by the Court.

4. On 11.07.2002, upon being acquitted by the Court of Judicial Magistrate, First Class, Hissar, in Crl. Case No. 33-I of 1994, the Appellant

reported to join his duty, but he was informed by the Respondent that his services stood terminated w.e.f. 21.10.1994. The Appellant served the

demand notice upon the Respondent which was not acceded to and therefore, the industrial dispute with regard to order of termination from his

services was raised before the conciliation officer. On failure of the conciliation proceedings before him, the industrial dispute was referred by the

State Government in exercise of its statutory power u/s 10(1)(c) of the Industrial Disputes Act, 1947 (for short "the Act") to the Labour Court,

Hissar for adjudication of the existing industrial dispute in relation to the order of dismissal of the Appellant from his services. After adjudication of

the points of dispute referred to it, the Labour Court vide its award dated 22.05.2009 declared that the termination of the Appellant from his

services was illegal and passed an award of reinstatement of the Appellant with 60% back wages from the date of issuance of demand notice till

publication of the award and full back wages thereafter, till reinstatement.

5. Aggrieved by the same, the Respondent-Haryana Roadways filed C.W.P. No. 13366 of 2009 before the High Court of Punjab and Haryana at

Chandigarh. The High Court vide its order dated 01.04.2010 set aside the award dated 22.05.2009 and remanded the case back to the Labour

Court for fresh adjudication in the light of the applicability of the provisions of Article 311(2)(b) of the Constitution of India, to the

Appellant/workman.

6. The Labour Court vide its award dated 17.05.2011 in R.M. No. 3 of 2010 answered the reference by passing an award against the Appellant

on the ground that the reference of the industrial dispute is time barred. The Appellant challenged the correctness of the said award by filing a Civil

Writ Petition No. 20996 of 2011 before the High Court, which was dismissed on 14.11.2011 by the learned single Judge of the High Court

holding that the decision of the disciplinary authority of the Respondent is in the public interest and therefore, the same does not warrant

interference.

7. The Appellant thereafter filed Letters Patent Appeal No. 20 of 2012 before the Division Bench of the High Court against the order of the

learned single Judge. The same was dismissed vide order dated 09.01.2012 on the ground that the services of the Appellant were terminated by

the Respondent on 21.10.1994 in exercise of the powers conferred upon it under the provisions of Article 311(2)(b) of the Constitution of India,

whereas the Appellant had raised the industrial dispute vide the demand notice in the year, 2002. The Division Bench of the High Court found no

illegality or irregularity in the impugned judgment passed by the learned single Judge of the High Court.

8. Aggrieved by the impugned judgment and order dated 09.01.2012 of the High Court of Punjab and Haryana, the Appellant has filed this appeal

urging various grounds.

9. It has been contended by the learned Counsel for the Appellants that the services of the Appellant was illegally terminated from his services on

the ground of alleged misconduct of unauthorised absence, and no enquiry was conducted before the termination of services of the Appellant.

Further, it is contended that the reasons accorded by the Respondent are not justified for dispensing with the inquiry procedure in relation to the

allegations against the Appellant and invoking the provisions of Article 311(2)(b) of the Constitution of India and the Respondent had terminated

the services of the Appellant without complying with the principles of natural justice.

10. The learned Additional Advocate General for the State of Haryana, Mr. Narender Hooda has vehemently contended that the Labour Court

was right in rejecting the reference of the industrial dispute being on the ground that it was barred by limitation by answering the additional issue

No. 2 by placing reliance upon the decision of this Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-

Division, Kota v. Mohan Lal (2013) 14 SCC 543 wherein this Court has held as under:

19. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the Industrial Disputes Act, 1947,

but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of

discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in 279541

that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of

appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute

before grant of relief in an industrial dispute, must be invariably followed.

11. In our view of the facts and circumstances of the case on hand, the reference was made by the State Government to the Labour Court for

adjudication of the existing industrial dispute; it has erroneously held it to be barred by limitation. This award was further erroneously affirmed by

the High Court, which is bad in law and therefore the same is liable to be set aside. According to Section 10(1) of the Act, the appropriate

government ''at any time'' may refer an industrial dispute for adjudication, if it is of the opinion that such an industrial dispute between the workman

& the employer exists or is apprehended. Section 10(1) reads as follows:

10(1)[Where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second

Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the

Second Schedule or the Third Schedule, to a Tribunal for adjudication.

Thus, it is necessary for us to carefully observe the phrase ''at any time'' used in this section. Therefore, there arises an issue whether the question

of limitation is applicable to the reference of the existing industrial dispute that would be made by the State Government either to the Labour Court

or Industrial Tribunal for adjudication at the instance of the Appellant. This Court in 274998 after interpreting the phrases ''at any time'' rendered in

Section 10(1) of the Act, held thus:

7 ...Section 10(1) enables the appropriate Government to make reference of an industrial dispute which exists or is apprehended at any time to

one of the authorities mentioned in the section. How and in what manner or through what machinery the Government is apprised of the dispute is

hardly relevant.....The only requirement for taking action u/s 10(1) is that there must be some material before the Government which will enable

the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is an administrative function of the

Government as the expression is understood in contradistinction to judicial or quasi-judicial function....

Therefore, it is implicit from the above case that in case of delay in raising the industrial dispute, the appropriate government u/s 10(1) of the Act

has the power, to make reference to either Labour Court or Industrial Tribunal, if it is of the opinion that any industrial dispute exists or is

apprehended at any time, between the workman and the employer. Further, in 273163 it is held by this Court as under:

15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long

interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained

alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total

eclipse. In this case when the Government have chosen to refer the dispute for adjudication u/s 4K of the U.P. Act the High Court should not have

quashed the reference merely on the ground of delay. of course, the long delay for making the adjudication could be considered by the adjudicating

authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of

reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination.

(Emphasis laid by the court)

12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon

which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on

hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case

particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of

the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra,

wherein this Court has categorically held that the provisions of Limitation Act Under Article 137 has no application to make reference by the

appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the Appellant; the Labour Court nevertheless has the power to mould

the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the

dispute ceases to exist. The appropriate government in exercise of its statutory power u/s 10(1)(c) of the Act can refer the industrial dispute,

between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case

referred to supra. Therefore, the State Government has rightly exercised its power u/s 10(1)(c) of the Act and referred the points of dispute to the

Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to

supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of 288917 it was

held by this Court as follows-

17. It was submitted on behalf of the Respondent that on account of delay in raising the dispute by the Appellants the High Court was justified in

denying relief to the Appellants. We cannot agree.... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra) 1993 AIR SCW

2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results

in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost

and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the Appellants for any

relief....

(Emphasis laid by the Court)

In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the

State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time,

considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the

Respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to

adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of

material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court

for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of 275159 this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:

10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the

act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is

required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court

can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or

board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand

regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages

instead of full back wages....

(Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the

workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the Respondent in adhering to the assurance given to the

workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State

Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the

Respondent. Keeping in mind the date of acquittal of the Appellant and the date on which he approached the conciliation officer by raising the

dispute, since the Respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication.

Therefore it cannot be said that there was a delay on the part of the Appellant in raising the dispute and getting it referred to the Labour Court by

the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its

reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the

cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division

Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective,

keeping in view the power of the State Government u/s 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial

dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect

in Industrial Jurisprudence as the same would affect the public interest at large.

18. The Labour Court has failed to exercise its statutory power coupled with duty by not going into the merits of the case and adjudicating the

points of dispute referred to it while answering the additional issue No. 2 framed by it regarding limitation. Therefore, it is a fit case for us to

exercise the jurisdiction of this Court for the reason of non adjudication of dispute on merits between the parties with regard to the justifiability of

the order of dismissal passed by Respondent.

19. In the instant case, as could be seen from the order No. 5278/ECC dated 21.10.1994, the charge sheet bearing No. 8648/ECC dated

08.09.1994 was sent to the village residence of the Appellant through special messenger of the Respondent. However, the charge sheet was not

served upon the Appellant according to the said order; for the reason that the Appellant was neither found in his village residence nor did anyone

know of his whereabouts. Therefore, the Appellant was informed through the newspaper ''Dainik Tribune'' dated 04.10.1994 that he should join

his duties and deposit the amount regarding tickets within 15 days of publication of the notice and submit his reply. Despite the same, the Appellant

neither joined his duties nor filed his reply. Since the Appellant was being unresponsive, the Respondent was of the view that it is in public interest

to not keep the Appellant in its service. Therefore, an order Under Article 311(2)(b) of the Constitution was passed, giving effect to order of

termination of services of the Appellant and disentitling him of any benefits for the period of absence.

20. From the reason mentioned in the termination order, it is clear that the Appellant continuously remained absent from his duties for more than

five months. Despite the publication of the notice, the Appellant neither joined his duty nor did he submit his reply. Therefore, the Respondent

straight away passed an order of termination without conducting an enquiry as required in law against the Appellant to prove the alleged

misconduct of unauthorised absence by placing reliance upon Article 311(2)(b) of the Constitution of India.

21. In view of the undisputed facts narrated as above, it is clear that no enquiry was conducted by the Appellant against the workman to prove the

alleged misconduct of unauthorised absence from his duties. The reason for dispensing with the enquiry is not at all forthcoming in the order of

termination which refers to the aforesaid constitutional provision. With regard to conduct and discipline of its employees the Respondent is bound

to follow the Industrial Employment Standing Orders Act, 1946. The Labour Court has failed to take into account these important legal aspects of

the case and has erroneously rejected the reference by answering the additional issue No. 2 on the question of limitation which is totally irrelevant

and not adjudicating the points of dispute on merits has rendered its award bad in law. This amounts to failure to exercise its statutory power

coupled with duty.

22. We are of the considered view that the disciplinary proceedings initiated by the Respondent Under Rule 7 of the Haryana Civil Services

(Punishment and Appeal) Rules, 1987 are not only untenable in law but also contrary to the legal principles laid down by this Court. The Appellant

being a workman as defined u/s 2(s) of the Act is an employee of the Respondent therefore he will be governed by the Model Standing Orders

framed under the Industrial Employment (Standing Orders) Act, 1946.

23. Thus, the fact remains that the disciplinary proceedings were not initiated under the provisions of the Industrial Employment (Standing Orders)

Act, 1946. The Respondent, both before the Labour Court and the High Court, has erroneously placed reliance on the order of termination

passed against the workman without producing any evidence on record to justify the alleged misconduct of unauthorised absence of the Appellant.

Therefore, the points of dispute referred to the Labour Court should have been answered affirmatively by it and an award granting the reliefs as

prayed by the Appellant should have been passed. This aspect of the matter is not examined by the High Court either in the Writ Petition or in the

Letters Patent Appeal. Therefore, the impugned judgment and order of the High Court and award of the Labour Court are bad in law and liable to

be set aside.

24. Both the Labour Court and the High Court have failed to examine the findings recorded in the order of termination which was the subject-

matter of reference made by the state government for adjudication. The Labour Court and the High Court have failed to examine another important

aspect that there is neither any tenable explanation nor any material evidence produced by the Respondent before the courts below to justify its

adoption of the Haryana Civil Services (Punishment and Appeal) Rules for initiating the disciplinary proceedings against the Appellant-workman. In

the absence of plea and material documents produced by the Respondent, the proceedings initiated and passing of the order of termination is bad

in law. The Appellant is a workman in terms of Section 2(s) of the Act, therefore, Model Standing Orders framed under the provisions of Industrial

Employment (Standing Orders) Act of 1946 and the principles of natural justice are required to be followed by the Respondent for initiating

disciplinary proceedings and taking disciplinary action against the workman. Since the Respondents have not followed the procedure laid down

therein from the beginning till the passing of the order of termination, the same is vitiated in law and hence, liable to be set aside.

25. We are of the view that the Labour Court and the High Court have erred in not deciding the industrial dispute between the parties on the basis

of admitted facts, firstly, the enquiry not being conducted for the alleged misconduct of unauthorised absence by the Appellant from 02.04.1993

and secondly, the enquiry being dispensed with by invoking Article 311(b)(2) of the Constitution of India without any valid reason. Moreover, an

order stating the impossibility of conducting the enquiry and dispensing with the same was not issued to the Appellant. The reasoning assigned in

the order of termination is bad in law. Therefore, the impugned judgment, order and award of the High Court and the Labour Court are required to

be set aside as the same are contrary to the provisions of the Act, principles of natural justice and the law laid down by this Court in catena of

cases referred to supra.

26. In addition to the above findings and reasons, the case of 275552 is aptly applicable to the fact situation of the case on hand. In the aforesaid

case, the Respondents had been detained under the Preventive Detention Act, 1950. Thereafter, they were terminated by the Appellants without

being given a reasonable opportunity to show cause as to why they shouldn''t be terminated. It was held by this Court as follows:

13. Even in regard to its employees who may have been detained under the Act, if after their release the Appellant wanted to take disciplinary

action against them on the ground that they were guilty of misconduct, it was absolutely essential that the Appellant should have held a proper

enquiry. At this enquiry, reasonable opportunity should have been given to the Respondents to show cause and before reaching its conclusion, the

Appellant was bound to lead evidence against the Respondents, give them a reasonable chance to test the said evidence, allow them liberty to lead

evidence in defence, and then come to a decision of its own. Such an enquiry is prescribed by the requirements of natural justice and an obligation

to hold such an enquiry is also imposed on the Appellant by Clause 36(3) of the Scheme of 1951 and Clause 45(6) of the Scheme of 1956. It

appears that in the present enquiry, the Respondents were not given notice of any specific allegations made against them, and the record clearly

shows that no evidence was led in the enquiry at all. It is only the detention orders that were apparently produced and it is on the detention orders

alone that the whole proceedings rest and the impugned orders are founded. That being so, we feel no hesitation in holding that the Court of

Appeal was perfectly right in setting aside the respective orders passed by the two leaned single Judges when they dismissed the three writ

petitions filed, by the Respondents.

14 ...The circumstance that the Respondents happened to be detained can afford no justification for not complying with the relevant statutory

provision and not following the principles of natural justice. Any attempt to short-circuit the procedure based on considerations of natural justice

must, we think, be discouraged if the rule of law has to prevail, and in dealing with the question of the liberty and livelihood of a citizen,

considerations of expediency which are not permitted by law can have no relevance whatever....

(Emphasis laid by the Court)

27. In the present case, before passing the order of dismissal for the act of alleged misconduct by the workman-appellant, the Respondent should

have issued a show cause notice to the Appellant, calling upon him to show cause as to why the order of dismissal should not be passed against

him. The Appellant being an employee of the Respondent was dismissed without conducting an enquiry against him and not ensuring compliance

with the principles of natural justice. The second show cause notice giving an opportunity to show cause to the proposed punishment before

passing the order of termination was also not given to the Appellant-workman by the Respondent which is mandatory in law as per the decisions of

this Court in the case of 278014 and 275516

28. With respect to the case on hand, the Appellant was on unauthorised absence only due to the fact that he had genuine constraints which

prevented him from joining back his duties. The unauthorised absence of the Appellant which lead to his termination was due to the fact that the he

was falsely implicated in the criminal case filed at the instance of the Respondent and that he must have had reasonable apprehension of arrest and

was later in judicial custody. It is to be noted that out of the total period of the alleged unauthorised absence, the Appellant was under judicial

custody for two months due to the criminal case filed against him at the instance of the Respondent.

29. Further, assuming for the sake of argument that the unauthorised absence of the Appellant is a fact, the employer is empowered to grant of

leave without wages or extraordinary leave. This aspect of the case has not been taken into consideration by the employer at the time of passing

the order of termination. Therefore, having regard to the period of unauthorised absence and facts and circumstances of the case, we deem it

proper to treat the unauthorised absence period as leave without wages. In our view, the termination order is vitiated since it is disproportionate to

the gravity of misconduct alleged against him. The employment of the Appellant-workman with the Respondent is the source of income for himself

and his family members'' livelihood, thereby their liberty and livelihood guaranteed Under Article 21 of the Constitution of India is denied as per the

view of this Court in its Constitution Bench decision in 282640 wherein it was held as under:

32...The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or

taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but

one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of

living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a

person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the

life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be In

accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it

possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to

livelihood and you shall have deprived him of his life....

30. The Appellant workman is a conductor in the Respondent-statutory body which is an undertaking under the State Government of Haryana thus

it is a potential employment. Therefore, his services could not have been dispensed with by passing an order of termination on the alleged ground

of unauthorised absence without considering the leave at his credit and further examining whether he is entitled for either leave without wages or

extraordinary leave. Therefore, the order of termination passed is against the fundamental rights guaranteed to the workman Under Articles 14, 16,

19 and 21 of the Constitution of India and against the statutory rights conferred upon him under the Act as well as against the law laid down by this

Court in the cases referred to supra. This important aspect of the case has not been considered by the courts below. Therefore, the impugned

award of the Labour Court and the judgment & order of the High Court are liable to be set aside.

31. The rejection of the reference by the Labour Court by answering the additional issue No. 2 regarding the delay latches and limitation without

adjudicating the points of dispute referred to it on the merits amounts to failure to exercise its statutory power u/s 11A of the Act. Therefore, we

have to interfere with the impugned award of the Labour Court and the judgment & order of the High Court as it has erroneously confirmed the

award of the Labour Court without examining the relevant provisions of the Act and decisions of this Court referred to supra on the relevant issue

regarding the limitation.

32. Further, in the case of 271318 in which the ratio decidendi has got relevance to the fact situation of the case on hand this Court held as under:

21. The question whether breach of statutory Regulations or failures to observe the principles of natural justice by a statutory Corporation will

entitle an employee of such Corporation to claim a declaration of continuance in service and the question whether the employee is entitled to the

protection of Articles 14 and 16 against the Corporation were considered at great length in Sukhdev Singh and Ors. v. Bhagatram Sardar Singh

Raghuvanshi and Anr. The question as to who may be considered to be agencies or instrumentalities of the Government was also considered, again

at some length, by this Court in Ramana Dayaram Shetty v. The International Airport Authority of India and Ors.

22. I find it very hard indeed to discover any distinction, on principle, between a person directly under the employment of the Government and a

person under the employment of an agency or instrumentality of the Government or a Corporation, set up under a statute or incorporated but

wholly owned by the Government..... There is no good reason why, if Government is bound to observe the equality clauses of the constitution in

the matter of employment and in its dealings with the employees, the Corporations set up or owned by the Government should not be equally

bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with

population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment

and security, to confirm the applicability of the equality clauses of the constitution, in relation to matters of employment, strictly to direct

employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is

necessary to take the employee beyond the reach of the rule which denies him access to a Court so enforce a contract of employment and denies

him the protection of Articles 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and employees

in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country''s economy. In growing

realization of the importance of employment in the public sector, Parliament and the Legislatures of the States have declared persons in the service

of local authorities, Government companies and statutory corporations as public servants and, extended to them by express enactment the

protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independence and integrity of those

employed in the public sector should be secured as much as the independence and integrity of civil servants.

(Emphasis given by the Court)

The above cardinal legal principles laid down by this Court with all fours are applicable to the case on hand for the reasons that the Respondent is

a statutory body which is under the control of the State Government and it falls within the definition of Article 12 of the Constitution of India and

therefore Part III of the Constitution is applicable to its employees.

33. Once the reference is made by the State Government in exercise of its statutory power to the Labour Court for adjudication of the existing

industrial dispute on the points of dispute, it is the mandatory statutory duty of the Labour Court u/s 11A of the Act to adjudicate the dispute on

merits on the basis of evidence produced on record. Section 11A was inserted to the Act by the Parliament by the Amendment Act 45 of 1971

(w.e.f. 15.12.1972) with the avowed object to examine the important aspect of proportionality of punishment imposed upon a workman if, the

acts of misconduct alleged against workman are proved. The ""Doctrine of Proportionality"" has been elaborately discussed by this Court by

interpreting the above provision in the case of 261120 as under:

33. The question is whether Section 11A has made any changes in the legal position mentioned above and if so, to what extent? The Statement of

objects and reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what

the Legislature wanted to achieve. At the time of introducing Section 11A in the Act, the legislature must have been aware of the several principles

laid down in the various decisions of this Court referred to above. The object is stated to be that the, Tribunal should have power in cases, where

necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment. The Statement of objects and

reasons has specifically referred to the limitation on the powers of an Industrial Tribunal, as laid, down by this Court in 279420

34. This will be a convenient stage to consider the contents of Section 11A. To invoke Section 11A, it is necessary that an industrial dispute of the

type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to

be satisfied that the, order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and

direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the work-man including

the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials

on record and prohibits it from taking any fresh evidence.

Thus, we believe that the Labour Court and the High Court have failed in not adjudicating the dispute on merits and also in not discharging their

statutory duty in exercise of their power vested u/s 11A of the Act and therefore, the impugned judgment, order and award are contrary to the

provisions of the Act and law laid down by this Court in the above case.

34. Further, the object of insertion of Section 11A of the Act is traceable to the International Labour Organisation resolution as it is stated in the

case of Workmen of Messrs Firestone Tyre & Rubber case (supra) that:

3. The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer

adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled, to appeal against the

termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body

concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case,

and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral

body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated

with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal''s power in an adjudication proceeding relating to discharge or

dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary, to set aside the order of

discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the

workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this

purpose, a new Section 11A is proposed to be inserted in the Industrial Disputes Act, 1947....

Therefore, we are of the firm view that the Labour Court and the High Court have failed to adjudicate the dispute referred to it on the merits. This

has lead to gross miscarriage of justice and therefore, we have to exercise our jurisdiction Under Article 136 of the Constitution of India and

interfere with the impugned judgment, order and award of the High Court and the Labour Court to do justice to the workman who has been

relentlessly litigating for his legitimate rights.

35. Having regard to the facts and circumstances of this case, we are of the view that it is important to discuss the Rule of the ''Doctrine of

Proportionality'' in ensuring preservation of the rights of the workman. The principle of ''Doctrine of Proportionality'' is a well recognised one to

ensure that the action of the employer against employees/workmen does not impinge their fundamental and statutory rights. The above said

important doctrine has to be followed by the employer/employers at the time of taking disciplinary action against their employees/workmen to

satisfy the principles of natural justice and safeguard the rights of employees/workmen.

36. The above said ""Doctrine of Proportionality"" should be applied to the fact situation as we are of the firm view that the order of termination,

even if we accept the same is justified, it is disproportionate to the gravity of misconduct. In this regard, it would be appropriate for us to refer to

certain paragraphs from the decision of this Court in the case of 267654 , wherein it was held as under:

66. It is clear from the above discussion that in India where administrative action is challenged Under Article 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. Hence 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 Article 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 into 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 285239 Venkatachaliah, J. (as he then was) pointed out that ''reasonableness'' of the administrator Under Article 14 in the context of

administrative law has to be judged from the stand point of Wednesbury rules. In 257305 272180 293997 and 268666 while Judging whether the

administrative action is ''arbitrary'' Under Article 14 (i.e. otherwise then being discriminatory), this Court has confined itself to a Wednesbury

review always.

68. Thus, when administrative action is attacked as discriminatory Under Article 14, the principle of primary review is for the Courts by applying

proportionality. However, where administrative action is questioned as ''arbitrary'' Under Article 14, the principle of secondary review based on

Wednesbury principles applies.

37. Additionally, the proportionality and punishment in service law has been discussed by this Court in the Om Kumar case (supra) as follows:

69. The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of

''arbitrariness'' of the order of punishment is questioned Under Article 14.

70. In this context, we shall only refer to these cases. In 267780 this Court referred to ''proportionality'' in the quantum of punishment but the

Court observed that the punishment was ''shockingly'' disproportionate to the misconduct proved. In 284745 this Court stated that the Court will

not interfere unless the punishment awards was one which shocked the conscience of the Court. Even then, the court would remit the matter back

to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative

penalty. It was also so stated in Ganayutham.

38. With respect to the proportionality of the punishment of ''censure'', it was further observed by this Court in the Om Kumar case (supra) that:

75. After giving our anxious consideration to the above submissions and the facts and the legal principles above referred to, we have finally come

to the conclusion that it will be difficult for us to say that among the permission minor punishments, the choice of the punishment of "censure" was

violative of the Wednesbury rules. No relevant fact was omitted nor irrelevant fact was taken into account. There is no illegality. Nor could we say

that it was shockingly disproportionate. The administrator had considered the report of Justice Chinnappa Reddy Commission, the finding of the

Inquiry Officer, the opinion of the UPSC which was given twice and the views of the Committee of Secretaries. Some were against the officer and

some were in his favour. The administrator fell that there were two mitigating factors (i) the complicated stage at which the officer was sent to DDA

and (ii) the absence of malafides. In the final analysis, we are not inclined to refer the matter to the Vigilance Commissioner for upward revision of

punishment.

39. Now, it is necessary for this Court to examine another aspect of the case on hand, whether the Appellant is entitled for reinstatement, back

wages and the other consequential benefits. In the case of 265616 this Court opined as under:

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the

employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a

person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an

order which has the effect of severing the employer employee relationship, the latter"s source of income gets dried up. Not only the concerned

employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious

food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to

avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The

reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by

the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the

employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically

plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back

wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and

rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three Judge Bench in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works

Pvt. Ltd. (supra).... The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would

mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and

simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed

to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or

invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go

through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not

survive to see the day when relief is granted. More so in our system where the law''s proverbial delay has become stupefying. If after such a

protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will

be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of

his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages

except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the

unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to

resist the workmen''s demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement

being the normal rule, it should be followed with full back wages.....

In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the

verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party

objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the

relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent

and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that

something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful

but legal and regular....

24. Another three Judge Bench considered the same issue in Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour

Court, New Delhi (supra) and observed: Plain common sense dictates that the removal of an order terminating the services of workmen must

ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages

too..... In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full

back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional

hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be

caused to the workmen if the relief is denied than to the employer if the relief is granted.

(Emphasis supplied by this Court)

40. The above critical analysis of law laid down by this Court in the case referred to supra, is very much relevant to the case on hand, which is

neither discussed nor considered and examined by the courts below while answering the reference made by the State Government and passing the

award, judgments & orders in a cavalier manner. Thus, the lives of the Appellant and his family members have been hampered. Further, on facts,

we have to hold that the order of termination passed is highly disproportionate to the gravity of misconduct and therefore shocks the conscience of

this Court. Hence, we hold that the Appellant is entitled for the reliefs as prayed by him in this appeal.

41. In view of the foregoing reasons, the award of the Labour Court and the judgment & order of the High Court are highly erroneous in law.

Therefore, the same are required to be interfered with by this Court in exercise of the appellate jurisdiction as there is miscarriage of justice for the

workman in this case.

42. It is an undisputed fact that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the

instance of the Respondent. Raising the industrial dispute belatedly and getting the same referred from the State Government to the Labour Court is

for justifiable reason and the same is supported by law laid down by this Court in Calcutta Dock Labour Board (supra). Even assuming for the

sake of the argument that there was a certain delay and latches on the part of the workman in raising the industrial dispute and getting the same

referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by adjudicating the same on

merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour

Court. Both the learned single Judge as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters Patent Appeal have

failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the Respondent, the

award passed by the Labour Court and the judgment & order of the High Court are liable to be set aside. When we arrive at the aforesaid

conclusion, the next aspect is whether the workman is entitled for reinstatement, back wages and consequential benefits. We are of the view that

the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State

Government, the workman will be entitled in law for back wages and other consequential benefits from the date of raising the industrial dispute i.e.

from 02.03.2005 till reinstatement with all consequential benefits.

43. For the foregoing reasons, we grant the following reliefs to the workman by allowing this appeal:

(i) The award of the Labour Court, judgment and orders passed by the High Court are set aside;

(ii) The Respondent is directed to reinstate the Appellant-workman with back wages from the date of raising the industrial dispute i.e. 02.03.2005

till the date of his reinstatement with all consequential benefits such as continuity of service, wage revisions and other statutory monetary benefits as

the Respondent has been litigating the dispute without tenable and acceptable reason; and

(iii) Since the Appellant-workman was compelled to take on this long battle of litigation to get his rights enforced from the Court of law, the

Respondent is directed to implement this order within six weeks from the date of receipt of the copy of this Judgment.

The appeal is allowed. No costs.