Judgement - SL - (3)

Supreme Court of India
Management Of Coimbatore ... vs Secretary, Coimbatore District ... on 23 April, 2007
Author: C Thakker
Bench: C.K. Thakker, Tarun Chatterjee

CASE NO.:
Appeal (civil) 2106 of 2007

PETITIONER:
MANAGEMENT OF COIMBATORE DISTRICT CENTRAL CO-OPERATIVE BANK

RESPONDENT:
SECRETARY, COIMBATORE DISTRICT CENTRAL CO-OPERATIVE BANK EMPLOYEES ASSOCIATION & ANR

DATE OF JUDGMENT: 23/04/2007

BENCH:
C.K. THAKKER & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T CIVIL APPEAL No. 2106 OF 2007 Arising out of Special Leave Petition (Civil) No. 5187 OF 2005 C.K. THAKKER, J.

Leave granted.

A Public Utility Undertaking (Co-operative Bank) challenges in this appeal an order passed by a Single Judge of the High Court of Judicature at Madras dated September 18, 2000 in Writ Petition No. 11948 of 1993 and modified by the Division Bench of the said Court on November 3, 2004 in Writ Appeal No. 45 of 2001. FACTUAL MATRIX To appreciate in its proper perspective an important question raised in the appeal, it is necessary to set out relevant facts.

The appellant is Coimbatore District Central Co- operative Bank having its head office at Coimbatore. It is having 17 branches in the Revenue District of Coimbatore. It is the case of the appellant-Bank that the Coimbatore District Central Bank Employees Association ('Union' for short) gave a 'strike notice' on March 31, 1972 which was received by the Management on April 5, 1972 proposing to go on strike from April 14, 1972. The reason for such notice and going on strike was suspension of certain employees and withholding of their salary by the Management. Since the strike-call was illegal and the notice was not in consonance with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), the action of going on strike was unlawful. The Union was accordingly informed not to go on strike. The Labour Officer, Coimbatore in the meanwhile commenced Conciliation Proceedings in connection with certain issues raised by the Union. Despite proper advice by Labour Officer, the employees commenced strike from April 17, 1972. The strike was totally illegal and unlawful. On April 19, 1972, notice was issued to the Union stating therein that the workmen should join duties by April 22, 1972 by tendering unconditional apology. The employees accepted it. A settlement had been arrived at between the Management and the Union and 134 employees gave up 'strike call' and resumed work. 53 employees, however, refused to join duty and continued their illegal strike and acts of misconduct. The illegal acts of

Natural justice.
Doctrine of proportionality

employees affected the work of the Bank very badly. It was alleged that not only the workmen did not join duty and continued illegal and unlawful strike, but also prevented other employees from resuming duty and threatened them with dire consequences if they returned for duty. Disciplinary proceedings were, therefore, initiated against 53 workmen, they were placed under suspension and inquiry was instituted. The employees were intimated of the charges levelled against them, which they denied. In spite of notices, the workmen did not participate in disciplinary proceedings and remained absent. The Management was, therefore, constrained to proceed with the disciplinary inquiry ex parte against them. By an order dated January 6, 1973, the workmen were held guilty of the charges and an order of punishment was passed. By the said order, two punishments were awarded on the workmen; (i) stoppage of increment for 1- 4 years with cumulative effect; and (ii) non-payment of salary during the period of suspension. According to the Bank, the case was an appropriate one to impose extreme penalty of dismissal from service, but by taking liberal view, the extreme punishment was not imposed on the employees and they were retained in employment by the Bank. The workmen joined duty on January 17, 1973. They should have accepted the order gracefully and appreciated the attitude adopted by the Management. The workmen, however, did not do so. They preferred to file appeal which was dismissed by the Executive Committee.

DECISION OF LABOUR COURT The workmen, being aggrieved by the decision, raised an industrial dispute and the matter was referred to Labour Court, Coimbatore by the Government under Section 10 of the Act. The Labour Court after extending opportunity of hearing to both the sides and considering the evidence on record framed the following two issues;

1. Whether the punishment of stoppage of 1 to 4 increments with cumulative effect on the 1 to 53 workers is justified?

2. Whether the 53 workmen are entitled to be paid wages for the period of suspension? After considering the evidence in its entirety and relevant case law on the point, the Court held that all the four charges levelled against the workmen were proved. It also held the inquiry to be legal, valid and in consonance with the principles of natural justice. The evidence established that threat was administered by the employees.

The Labour Court concluded;

"Unlike criminal cases it is not necessary that the evidence should be beyond doubt. Nevertheless, the witnesses have given clear evidence to prove charges. Therefore, we have to accept them and hold that charges 1 to 4 have been proved against all the 53 employees."

On the basis of the above finding, the Labour Court held that it could not be said that the action of the Management could be described as illegal, unlawful or improper. Accordingly, the demands of the workmen were rejected and reference was dismissed. APPROACH OF HIGH COURT Being aggrieved by the award passed by the Labour Court, the Union approached the High Court by filing a Writ Petition. The learned Single Judge did not disagree with the findings recorded by the Labour Court and held that the workmen were not entitled to wages for the period they had not worked. As to the second punishment, however, the learned Single Judge held that stoppage of 1 to 4 annual

increments with cumulative effect was 'harsh'. The penalty of stoppage of annual increments with cumulative effect had far-reaching consequences. It would adversely affect the workmen throughout their service and in retrial benefits to be received by them. It would further affect their families. Imposition of such punishment, according to the learned Single Judge, was 'not valid in law' and liable to be set aside. The petition was, accordingly, partly allowed confirming the withdrawal of wages for the period of suspension, but by setting aside the order of punishment of stoppage of increments. The Management was directed to pay the arrears in respect of stoppage of increments to the workmen with 'interest at the rate of 12% per annum' within sixty days from the date of receipt of the copy of the order.

The Management was aggrieved by the above order passed by the learned Single Judge and preferred intra- court appeal before the Division Bench of the High Court. The Division Bench rightly noted that it is settled law that the question of choice and quantum of punishment is within the discretion of the Management. "But, the sentence has to suit the offence and the offender". If it is unduly harsh or vindictive, disproportionate or shocks the conscience of the Court, it can be interfered with by the Court. Then referring to a leading decision of this Court in Ranjit Thakur v. Union of India & Ors., (1987) 4 SCC 611, the Division Bench held that the order passed by the learned Single Judge required modification. The Division Bench opined that proper punishment would be stoppage of increment/increments without cumulative effect on all 53 employees would serve the ends of justice. The Division Bench also held that the order passed by the learned Single Judge directing the Management to pay interest was not proper and was accordingly set aside. It is this order which is challenged by the Management in the present appeal.

RIVAL SUBMISSIONS We have heard the learned counsel for the parties. The learned counsel for the appellant-Bank contended that both, the learned Single Judge as well as the Division Bench of the High Court, were in error in interfering with the order of punishment passed by the Management particularly when the said action had been confirmed by a well-considered and well-reasoned award made by the Labour Court, Coimbatore. It was urged that once an inquiry has been held to be in consonance with rules of natural justice, charges had been proved and an order of punishment had been passed, it could not have been set aside by a 'Writ-Court' in judicial review. The Labour Court recorded a finding of fact which had not been disturbed by the High Court that principles of natural justice were not violated. The inquiry was conducted in consonance with law and all the charges levelled against the employees were established. If it is so, the High Court was clearly wrong in interfering with the award of the Tribunal. According to the counsel, the High Court was neither exercising appellate power over the action taken by the Management nor on quantum of punishment awarded. The Court was also not having appellate jurisdiction over the Labour Court. The jurisdiction of the High Court under Article 226/227 of the Constitution was limited to the exercise of power of judicial review. In exercise of that power, the High Court could not substitute its own judgment for the judgment/order/action of either the Management or the Labour Court. The order of the High Court, therefore, deserves to be quashed and set aside. It was also urged that even if it is assumed that the High Court has jurisdiction to enter into such arena, then also, in the facts and circumstances of the case and considering the allegations levelled and proved against the workmen, it cannot be said that an order of stoppage of increment/increments with cumulative effect could not have been made. On the contrary, the matter was very serious which called for much

more severe penalty, but by taking liberal view, the Management had imposed only a 'minor' penalty. Such reasonable order could not have been set aside by the High Court. The counsel submitted that 'Banking service' is an 'essential service'. It has public utility element therein and it was the duty of the employees connected with such service to discharge their duties sincerely, faithfully and whole-heartedly. In the instant case, not only the workmen refused to join duty, but they prevented other employees who had amicably settled the matter with the Management in discharging their duties by administering threat and by successfully obstructing the Management in the discharge of its obligations as Public Utility Undertaking. Serious view, therefore, was called for. There was total and complete misconception on the part of the High Court in holding that the punishment was 'harsh'..It was, therefore, submitted on behalf of the Management that the order passed by the learned Single Judge and modified by the Division Bench deserves to be set aside by confirming the action taken by the Management and approved by the Labour Court, Coimbatore.

The learned counsel for the respondent-Union, on the other hand, supported the order passed by the Division Bench of the High Court. According to him, the learned Single Judge was fully justified in partly allowing the petition observing that the punishment imposed on the workmen was 'clearly harsh' and in setting aside that part of the punishment by which increment/increments was/were stopped. Since the punishment imposed by the Management was grossly disproportionate, the learned Single Judge was also right in directing the Bank Management to pay salary with 12% interest. It is no doubt true, stated the learned counsel, that the Division Bench partly set aside the direction of the learned Single Judge by modifying the punishment permitting stoppage of increment/increments of the workmen without cumulative effect and by setting aside payment of salary with 12% interest, but as the said part of the order passed by the Division Bench has not been appealed against by the Union, it would remain. But no case has been made out by the Bank Management to interfere with the order of the Division Bench and the appeal deserves to be dismissed.

FINDINGS RECORDED We have given our most anxious and thoughtful consideration to the rival contentions of the parties. From the facts referred to above and the proceedings in the inquiry and final order of punishment, certain facts are no longer in dispute. A call for strike was given by the Union which was illegal, unlawful and not in consonance with law. Conciliation proceedings had been undertaken and there was amicable settlement of dispute between the Management on the one hand and the Union on the other hand. Pursuant to such settlement, 134 workmen resumed duty. 53 workmen, however, in spite of the strike being illegal, refused to join duty. Their action was, therefore, ex facie illegal. The workmen were, in the circumstances, placed under suspension and disciplinary proceedings were initiated. In spite of several opportunities, they did not co-operate with the inquiry and the Inquiry Officer was compelled to proceed ex parte against them. Four allegations were levelled against the workmen;

(i) The employees did not come for work from April 17, 1972;

(ii) They took part in illegal strike from that date, i.e. April 17, 1972;

(iii) They prevented other employees who returned for work from joining duty by administering threat to them; and

(iv) They prevented the employees who came to receive wages on April 17, 1972.

At the enquiry, all the charges levelled against the employees were established. In the light of the said finding, the Management imposed punishment of (i) stoppage of increment of 1 to 4 years with cumulative effect; and (ii) non-payment of salary during period of suspension. In our considered opinion, the action could not be said to be arbitrary, illegal, unreasonable or otherwise objectionable. When the Union challenged the action and reference was made by the 'appropriate Government' to the Labour Court, Coimbatore, the Labour Court considered all questions in their proper perspective. After affording opportunity of hearing to both the parties, the Labour Court negatived the contention of the Union that the proceedings were not in consonance with principles of natural justice and the inquiry was, therefore, vitiated. It held that the inquiry was in accordance with law. It also recorded a finding that the allegations levelled against the workmen were proved and in view of the charges levelled and proved against the workmen, the punishment imposed on them could not be said to be excessive, harsh or disproportionate. It accordingly disposed of the reference against the workmen. In our considered opinion, the award passed by the Labour Court was perfectly just, legal and proper and required 'no interference'. The High Court, in exercise of power of judicial review under Article 226/227 of the Constitution, therefore, should not have interfered with the well-considered award passed by the Labour Court.

The learned counsel for the Union, however, submitted that under the 'doctrine of proportionality', it was not only the power, but the duty of the 'Writ Court' to consider whether the penalty imposed on workmen was in proportion to the misconduct committed by the workmen. Our attention, in this connection, was invited by both the sides to several decisions of English Courts as also of this Court.

DOCTRINE OF PROPORTIONALITY So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived at in our legal system but has come to stay. With the rapid growth of Administrative Law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by Courts. If an action taken by any authority is contrary to law, improper, unreasonable, irrational or otherwise unreasonable, a Court of Law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the 'doctrine of proportionality'.

'Proportionality' is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise the elaboration of a rule of permissible priorities.

de Smith states that 'proportionality' involves 'balancing test' and 'necessity test'. Whereas the former ('balancing test') permits scrutiny of excessive onerous penalties or infringement of rights or

interests and a manifest imbalance of relevant considerations, the latter ('necessity test') requires infringement of human rights to the least restrictive alternative. ['Judicial Review of Administrative Action'; (1995); pp. 601-605; para 13.085; see also Wade & Forsyth; 'Administrative Law'; (2005); p.366].

In Halsbury's Laws of England, (4th edn.); Reissue, Vol.1(1); pp.144-45; para 78, it is stated; "The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."

The doctrine has its genesis in the field of Administrative Law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no 'pick and choose', selective applicability of Government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a 'sledge- hammer to crack a nut'. As has been said many a time; "Where paring knife suffices, battle axe is precluded". In the celebrated decision of Council of Civil Service Union (CCSU) v. Minister for Civil Service, (1984) 3 All ER 935 : (1984) 3 WLR 1174 : (1985) AC 374 (HL), Lord Diplock proclaimed;

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality' " (emphasis supplied) CCSU has been reiterated by English Courts in several subsequent cases. We do not think it necessary to refer to all those cases.

So far as our legal system is concerned, the doctrine is well-settled. Even prior to CCSU, this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a Court to interfere with such penalty in appropriate cases. In Hind Construction Co. v. Workmen, (1965) 2 SCR 85 : AIR 1965 SC 917, some workers remained absent from duty treating a particular day as holiday. They were dismissed from service. The Industrial Tribunal set aside the action. This Court held that the absence could have been treated as leave without pay. The workmen might have been warned and fined. (But) "It is impossible to think that any reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner." The Court concluded that the punishment imposed on the workmen was not only severe and out of proportion to the fault, but one which, in our judgment, no reasonable employer would

have imposed. (emphasis supplied) In Indian Chamber of Commerce v. Workmen, (1972) 1 SCC 40 : AIR 1972 SC 763, the allegation against the employee of the Federation was that he issued legal notices to the Federation and to the International Chamber of Commerce which brought discredit to the Federation   the employer. Domestic inquiry was held against the employee and his services were terminated. The punishment was held to be disproportionate to the misconduct alleged and established. This Court observed that "the Federation had made mountain out of a mole hill and made a trivial matter into one involving loss of its prestige and reputation."

In Ranjit Thakur referred to eariler, an army officer did not obey the lawful command of his superior officer by not eating food offered to him. Court Martial proceedings were initiated and a sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment. Applying the doctrine of proportionality and following CCSU, Venkatachaliah, J. (as His Lordship then was) observed:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defence of logic, then the sentence would not be immune from correction.

Irrationality and perversity are recognized grounds of judicial review."

(Emphasis supplied) DOCTRINE OF PROPORTIONALITY : WHETHER APPLICABLE From the above decisions, it is clear that our legal system also has accepted the doctrine of proportionality. The question, however, is whether in the facts and circumstances of the present case, the High Court was justified in invoking and applying the doctrine of proportionality. In our judgment, the answer must be in the negative. Normally, when disciplinary proceedings have been initiated and finding of fact has been recorded in such inquiry, it cannot be interfered with unless such finding is based on 'no evidence' or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding. In the present case, four charges had been levelled against the workmen. An inquiry was instituted and findings recorded that all the four charges were proved. The Labour Court considered the grievances of the workmen, negatived all the contentions raised by them, held the inquiry to be in consonance with principles of natural justice and findings supported by evidence. Keeping in view the charges proved, the Labour Court, in our opinion, rightly held that the punishment imposed on workmen could not be said to be harsh so as to interfere with it. In our opinion, therefore, the High Court was not right in exercising power of judicial review under Article 226/227 of the Constitution and virtually substituting its own judgment for the judgment of the Management and/or of the Labour Court. To us, the learned counsel for the appellant-Bank is also right in submitting that apart from charges 1 and 2, charges 3 and 4 were 'extremely serious' in nature and could not have been underestimated or underrated by the High Court. In this connection, it is profitable to refer to a decision of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh & Ors., (1964) 1 SCR 709 : AIR 1964 SC

486. In that case, the respondents were employees of the appellant. A strike was going on in the concern of the appellant. The respondents obstructed loyal and willing trammers from working in the Colliery and insisted those workmen to join them in the obstruction. A charge-sheet was served on the respondents and disciplinary inquiry was instituted. They were found guilty and were dismissed from service. Since another reference was pending, approval of the Industrial Tribunal was sought which was granted. In a reference, however, the Industrial Tribunal held that penalty of dismissal was uncalled for and amounted to victimization. The Management approached this Court.

Allowing the appeal, setting aside the order of the Tribunal and upholding the order of dismissal, this Court stated;

Now there is no doubt that though in case of proved misconduct, normally the imposition of a penalty may be within the discretion of the management there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the nature of the offence that the tribunal may be able to draw an inference of victimisation merely from the punishment inflicted. But we are of opinion that the present is not such a case and no inference of victimisation can be made merely from the fact that punishment of dismissal was imposed in this case and not either fine or suspension. It is not in dispute that a strike was going on during those days when the misconduct was committed. It was the case of the appellant that the strike was unjustified and illegal and it appears that the Regional Labour Commissioner, Central, Dhanbad, agreed with this view of the appellant. It was during such a strike that the misconduct in question took place and the misconduct was that these thirteen workmen physically obstructed other workmen who were willing to work from doing their work by sitting down between the tramlines. This was in our opinion serious misconduct on the part of the thirteen workmen and if it is found as it has been found proved, punishment of dismissal would be perfectly justified. (emphasis supplied) In M.P. Electricity Board v. Jagdish Chandra Sharma, (2005) 3 SCC 401, this Court held that dismissal for breach of discipline at workplace by employee could not be said to be disproportionate to the charge levelled and established and no interference was called for on the ground that such punishment was shockingly disproportionate to the charge pleaded and proved.

As observed by this Court in M.P. Gangadharan & Anr. v. State of Kerala & Ors., (2006) 6 SCC 162, the constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix in each case. It cannot be put in a straight-jacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the Court must be satisfied that a case has been made out for exercise of power of judicial review. The Court observed that we are not unmindful of the development of the law that from the doctrine of 'Wednesbury unreasonableness', the Court is leaning towards the doctrine of 'proportionality'. But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the Act was enacted.

It was then contended on behalf of 53 workmen that if the objectionable act on the part of the workmen was going on strike, all workmen ought to have been treated equally and even-handedly. The Management was not right in reinstating 134 employees immediately by depriving similar

benefit to 53 employees. It was, therefore, submitted that in the facts and circumstances of the case, the High Court was right in considering that aspect. Keeping in view the fact that they (134 workmen) had joined work and resumed duty, they were paid wages also. Since other employees (53 workmen) had not joined duty, the action of the Management of non-payment of salary may not be interfered with. But if they would be visited with other penal consequences of stoppage of increment/increments, the action would be arbitrary and unreasonable.

We are unable to uphold the contention. In our considered opinion, 53 employees cannot be said to be similarly situated to 134 employees who had entered into amicable settlement with the Management and resumed duty in 1972. It is settled law that equals must be treated equally and unequal treatment to equals would be violative of Article 14 of the Constitution. But, it is equally well-established that unequals cannot be treated equally. Equal treatment to unequals would also be violative of 'equal protection clause' enshrined by Article 14 of the Constitution. So far as 134 employees are concerned, they accepted the terms and conditions of the settlement and resumed work. 53 workmen, on the other hand, did not accept the settlement, continued with the strike which was declared illegal and unlawful and in departmental inquiry, they were found guilty. Moreover, they resorted to unlawful actions by administering threat to loyal workers. 53 workmen, therefore, in our judgment, cannot be said to form one and the same class in which 134 employees were placed. 53 employees, therefore, cannot claim similar benefit which had been granted to 134 employees.

In Union of India v. Parma Nanda, (1989) 2 SCC 177, a similar mistake was committed by the Central Administrative Tribunal which was corrected by this Court. In that case, P, an employee was chargesheeted alongwith other two employees for preparing false pay bills and bogus identity card. All of them were found guilty. A minor punishment was imposed on two employees, but P was dismissed from service since he was the 'mastermind' of the plan. P approached the Central Administrative Tribunal. The Tribunal modified the punishment on the ground that two other persons were let off with minor punishment but the same benefit was not given to P. His application was, therefore, allowed and the penalty was reduced in the line of two other employees. The Union of India approached this Court. It was urged that the case of P was not similar to other employees inasmuch as he was the principal delinquent who was responsible for preparing the whole plan was a party to the fraud and the Tribunal was in error in extending the benefit which had been given to other two employees. Upholding the contention, this Court set aside the order passed by the Tribunal and restored the order of dismissal passed by the Authority against him.

The principle laid down in Parma Nanda has been reiterated recently in Obettee (P) Ltd. V. Mohd. Shafiq Khan, (2005) 8 SCC 47. In Obettee, M instigated the workers of the factory to go on strike. He did not allow the vehicles carrying the articles to go out of the factory and also administered threat to co-workers. Proceedings were initiated against three employees. Two of them tendered unconditional apology and assurance in writing that they would perform their duties diligently and would not indulge in strike. The proceedings were, therefore, dropped against them. M, however, continued to contest the charges levelled against him. He was held guilty and was dismissed from service. The Tribunal upheld the action. The High Court, however, held that the distinction made by the Tribunal between M and other two workmen was 'artificial' and accordingly granted relief to M

similar to one granted to other two employees.

Setting aside the order of the High Court, upholding the action taken against him and restoring the order of the Tribunal, this Court observed that the cases of other two employees stood on a different footing and the High Court failed to appreciate the distinctive feature that whereas the two employees tendered unconditional apology, M continued to justify his action. The order of the High Court was, therefore, clearly unsustainable. It, therefore, cannot be said that the cases of 53 employees were similar to 134 employees and 53 employees were also entitled to claim similar benefit as extended by the Management to 134 employees. The net result of the above discussion would be that the decision rendered by the learned Single Judge and modified by the Division Bench of the High Court must be set aside. Certain developments, however, were brought to our notice by the learned counsel for the Union. It was stated that though in the departmental proceedings the workmen were held guilty, their services were not terminated. They were not paid wages for intervening period for which they had not worked, but were allowed to join duty and in fact they resumed work in the year 1973. This was done before more than three decades. The Labour Court did not grant any relief to them. Though the learned Single Judge allowed their petition and granted some relief, the order was modified by the Division Bench. 53 employees are now performing their functions and discharging their duties faithfully, diligently and to the satisfaction of the appellant-Bank. No proceedings have been initiated against them thereafter. 'Industrial peace' has been restored. If at this stage, some order will be passed by this Court after so long a period, it may adversely affect the functioning of the Bank. It was further submitted that the grievance of the Bank has been vindicated and correct legal position has been declared by this Court. The Court in the peculiar facts and circumstances of the case, therefore, may not interfere with a limited relief granted by the Division Bench of the High Court.

In our considered view, the submission is well founded and deserves acceptance. Hence, even though we are of the view that the learned Single Judge was not right in granting benefits and the order passed by the Division Bench also is not proper, it would not be appropriate to interfere with the final order passed by the Division Bench. Hence, while declaring the law on the point, we temper justice with mercy. In the exercise of plenary power under Article 142 of the Constitution, we think that it would not be proper to deprive 53 workmen who have received limited benefits under the order passed by the Division Bench of the High Court. For the foregoing reasons, we hold that neither the learned Single Judge nor the Division Bench of the High Court was justified in interfering with the action taken by the Management and the award passed by the Labour Court, Coimbatore which was strictly in consonance with law. In peculiar facts and circumstances of the case and in exercise of power under Article 142 of the Constitution, we do not disturb the final order passed by the Division Bench of the High Court on November 3, 2004 in Writ Appeal No. 45 of 2001.

The appeal is accordingly disposed of in the above terms. In the facts and circumstances of the case, there shall be no order as to costs.