would not have been willing to go back to him. Her conduct belies her allegation.

(18) After consideration of the matter, it appears to us that the marriage has been 'dead' for more than a decade. It has irretrievably broken. It is an 'insoluble mess'. Respectfully following the view taken by their Lordships of the Supreme Court in *Ms. Jorden Diengdeh* v. *S. S. Chopra* (1), *Chanderkala Trivedi* v. *Dr. S.P. Trivedi* (2),*V. Bhagat* v. *D. Bhagat* (3), *Romesh Chander v. Savitri* (4) and *Ashok Hurra* v. *Rupa Bipin Zaveri* (5), we think it would be appropriate to grant the decree of divorce as prayed for by the appellant.

(19) The appeal is, accordingly, allowed, In the circumstances, the parties are left to bear their costs.

S.C.K.

Before G.S. Singhvi & Iqbal Singh, JJ

GEETA RAM,—*Petitioner*

versus

P.O.L.C. BATHINDA & OTHERS,—*Respondents*

C.W.P. No. 11602 of 1997

26th March, 1998

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S. 10—Punjab Civil Service (Punishment & Appeal) Rules, 1970—Rls. 8 & 14—Absence from duty—Charge sheeted—Ex parte inquiry—Thereafter dismissed from service—No evidence produced by employer to substantiate allegation made—Petitioner denied all allegations—Rules 8(2) & 14 not complied with—Burden to prove allegation of misconduct is on employer unless employee admits such allegations—Labour Court failed to appreciate that rules were violated—Well settled principle of law that if delinquent does not participate in inquiry proceedings

(1) A.I.R. 1985 S.C. 935
(2) 1993 (4) S.C.C. 232
(3) A.I.R. 1994 S.C. 710
(4) A.I.R. 1995 S.C. 851
(5) A.I.R. 1997 S.C. 1266

department is to prove misconduct—Not done in the present case—Award is perverse.

Held, that an analysis of Rules 8(2) and 14 of the Punjab Civil Service (Punishment & Appeal) Rules, 1970 shows that the burden to prove the allegation of misconduct is on the employer unless the employee admits the article of charges. In the present case, the petitioner did not admit the allegation levelled against him. Rather, he denied the charge and stated that his application for grant of leave was still pending. He also prayed for grant of long leave due to the illness of his daughter and other family circumstances. Unfortunately, the learned Presiding Officer of the Labour Court failed to address himself on the issue of violation of the rules. Instead, he upheld the order of punishment passed on the basis of the enquiry report which was totally laconic in all respects and which was prepared in a most arbitrary and casual manner, only on the ground that the petitioner had not appeared before the Enquiry Officer. This approach, in our considered opinion, is a clearly erroneous because it is a settled principle of law that even if the delinquent does not participate in the enquiry proceedings, the department has to produce evidence to prove the charge of misconduct. Admittedly, this was not done in the case of the petitioner. Therefore, we do not have the slightest hesitation to hold that the finding recorded by the Labour Court on the issue of fairness of enquiry is not only erroneous but perverse.

(Para 9)

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S. 11—A—Scope and ambit discussed—Impugned award has not considered whether punishment imposed is just or no—Length of service and impact of alleged misconduct on service not considered—Labour Court failed to exercise jurisdiction vested in it under Section 11-A—Award set aside.

Held, that we examine the impugned award in the light of the principles laid down by the Supreme Court and by this Court on the ambit and scope of Section 11-A. It can reasonably be said that the Labour Court has failed to exercise its jurisdiction u/s 11-A. The learned Presiding Officer has not at all considered whether the punishment of dismissal imposed by the Government is just or not and whether any other punishment can meet the ends of justice. The past record of the petitioner, the length of his service and the impact of his alleged misconduct on the service have not at all been

taken into consideration while upholding the dismissal of the petitioner from service.

(Para 18)

J.K. Sibal, Sr. Advocate with Kumar Sethi, Advocate, for the Petitioners.

Rupinder Khosla, Dy. Advocate General, Punjab for respondent Nos. 2 & 3.

JUDGMENT

G.S. Singhvi, J.

(1) Whether the award passed by Labour Court, Bhatinda upholding the termination of the services of the petitioner is erroneous in law and warrants interference by the High Court in exercise of *certiorari* jurisdiction is the sole question that needs to be decided in this petition.

(2) The facts necessary for the decision of this case are that proceedings under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short 'the Rules')were initiated against the petitioner on the allegation of having wilfully remained absent from duty since 21st January, 1986. After inquiry the petitioner was dismissed from service *vide* order dated 19th January, 1990. He raised an industrial dispute which was referred to the Labour Court, Bhatinda for adjudication. The Labour Court examined the respective cases set up by the contesting parties and held that the workman i.e. the petitioner is not entitled to be reinstated in service because he has been punished on being found guilty of misconduct in an enquiry held in accordance with the principles of natural justice. On the basis of this conclusion, it passed the impugned award refusing to reinstate the petitioner in service.

(3) The first contention urged by Shri J.K. Sibal is that the finding recorded by the Labour Court on the issue of violation of the Rules of 1970 and the principles of natural justice is *per se* erroneous because the Labour Court has while deciding the issue of fairness of the departmental inquiry completely ignored fundamental errors committed by the Inquiry Officer. The second contention urged by Shri Sibal is that the impugned award is liable

to be quashed because of the failure of the Labour Court to exercise the jurisdiction vested in it under Section 11-A of the Industrial Disputes Act, 1947. The learned Deputy Advocate General supported the award passed by the Labour Court and urged that the High Court will not exercise its jurisdiction under Article 226 to give relief to a person who has been found guilty of remaining absent from duty. He pointed out that the petitioner did not appear before the enquiry officer in spite of service of notice and, therefore, he should not be allowed to make grievance about the violation of the principles of natural justice and the Rules of 1978. Shri Khosla submitted that even though the Labour Court has not considered the justness of punishment imposed on the petitioner, the High Court should not exercise its power to interfere with the discretion exercised by the competent authority in the matter of award of punishment.

(4) We have considered the respective contentions and have carefully perused the record of the writ petition as well as the record of the Labour Court summoned by us on 13th February, 1998. We have also perused the record of the enquiry produced by Shri Khosla at the time of hearing. It appears from this record that the memorandum dated 28th October, 1986 was issued to the petitioner for holding enquiry under Rule 8 of the Rules. It was got published in the newspapers dated 28th December, 1986. On 29th January, 1987, the reply sent by the petitioner was received by the Joint Secretary, Health and Family Welfare, Punjab. Thereafter, Dr. Prithipal Singh, Deputy Director, was appointed as enquiry officer. He issued some notices to the petitioner and submitted his enquiry report to the government along with letter No. DD(M) Pb-87/191 dated 21st December, 1987. The report submitted by him reads as under :—

> "Enquiry report against Dr. Geeta Ram Garg, S. No. 2310 by Enquiry Officer.
>
> The Presenting Officer, Superintendent E-II Br. presented the record on 17th December, 1987.
>
> Dr. Geeta Ram Garg, S.No. 2310 did not attend. On going through the documents, it has been found that Dr. Geeta Ram Garg is wilfully absent from duty since 21st January, 1986.

It is recommended that on account of his wilful absence from duty, the officer may be dismissed from service with effect from 21st January, 1986.

(Sd.)...,

(Prithipal Singh)
Enquiry Officer,
Deputy Director((Medical),
17th December, 1987. Directorate of Health
& F.W. Punjab."

(5) The proceedings of enquiry recorded by Dr. Prithipal Singh on 17th December, 1987 are also reproduced below :—

"Today on 17th December, 1987, the Presenting Officer, Superintendent, E-II Branch, is present along with the record of the case.

Dr. Geeta Ram Garg, PCMS-II has not reported even after waiting till 4.00 p.m. today on 17th December, 1987.

Consequently, I hereby order the Enquiry to be held *ex parte.*

Dr. Geeta Ram Garg, S. No. 2310 applied for earned leave for the period 21st January, 1986 to 19th April 1986. The same was rejected by the Civil Surgeon, Faridkot and Dr.Geeta Ram Garg was directed to report for duty immediately (page No. 198 of the LPF).

The above letter was returned to the Civil Surgeon, Faridkot undelivered as reported by Civil Surgeon, Faridkot, to the Director Health & F.W., Punjab (page 207) According to the record this officer is not bonded with the state government.

He was further asked *vide* letter No. DD(M) Pb-87/52-54, dated 2nd April, 1987 to attend the enquiry on 20th April, 1987 at 11.00 A.M. in the office of Deputy Director (Medical), Health & F.W., Punjab. He never reported for enquiry.

He was given another chance to report on 17th December, 1987 at 11.00 A.M. He has not reported to the undersigned for the purpose of enquiry inspite of having given two chances and so conclusion is inevitable that Dr. Geeta Ram Garg is wilfully absent from the enquiry and is wilfully absent from duty 21st January, 1986."

(6) After receiving the report of the enquiry officer, the department proposed the penalty of dismissal and referred the case to the Public Service Commission. Ultimately the order, dated 19th January, 1990, was issued dismissing the petitioner from service. Before the Labour Court, the petitioner challenged the order of punishment on the ground of violation of the principles of natural justice and arbitrariness. He also pleaded that the punishment imposed by the employer was wholly unjustified. The Labour Court considered the issue relating to the violation of the principles of natural justice and recorded the following finding :—

"The case of the workman is that his services had been terminated by the management without notice or charge-sheet, without holding any enquiry and without payment of any compensation to him w.e.f. 1st January, 1990. The evidence on the record, however, falsifies this claim of the workman. From the statement made by Dilbag Singh, a clerk of the office of Civil Surgeon, Faridkot, who has appeared as MW1, and Rajinder Singh, Senior Assistant, office of the Director, Health and family Welfare, Punjab Chandigarh, who has appeared as MW2, and the documents at Ex./M/1 to Ex. M/11, it stands proved that the workman had been absent from duty without leave and intimation about the rejection of his leave application had been sent to him by the Civil Surgeon, Faridkot, through registered post at the address of the workman but he had not received the letters and the same had been returned to the office of the Civil Surgeon with the reports that the workman could not be met despite efforts to contact him time and again. The documents in this connection are at Ex-M/1 to Ex. M/4. It is also in evidence that a charge-sheet Ex-M/5, had been sent to the workman through registered post at his address but the same had also not been received by the workman and had been received back with a report that the workman could not be met despite efforts to contact him time and again. The documents at Ex-M/7 and Ex-M/8 prove that a notice had been given to the workman thereafter through publication in the daily Ajit, Jalandhar, dated 29th December, 1986. The documents at Ex-M/9 and Ex-M/10 prove that Dr. Prithipal Singh, Deputy Director (M), Directorate as enquiry officer and Dr. Prithipal Singh had also given notices to the workman, dated 2nd April, 1987 and 4th December, 1987

but the workman had not appeared before the enquiry officer despite that and ultimately the enquiry was held *ex parte* and the workman was found guilty of misconduct and after obtaining advice from the Punjab Public Service Commission, the services of the workman had been terminated by the Punjab Government *vide* order, dated 1st January 1990 which was duly notified by publication in he Punjab Government Gazettee, dated 9th February, 1990, a copy of which is Ex. M/11.

In this statement as WW1, the workman has stated that he had received a copy of the charge-sheet and had then given a reply thereto. He has further stated that Dr. Prithipal Singh had been appointed as an enquiry officer against him and he had been called there twice but no proceedings had been taken. Further, according to him, when he had gone to appear before the enquiry officer for the third time, the enquiry officer had not been present and he had been told by his steno that he would be informed about the next date but he had not received any intimation about that. It is also in his statement that he had not been called to join in the enquiry proceedings and no show-cause notice had also been served upon him and no personal hearing had been given to him. He has also deposed that he had appeared two three times before the Director and had also met the Secretary concerned but he had not been heard. According to him the address which he had supplied to the department had been correct and land lady had given to him in writing to the effect that he had resided from the year 1982 to the year 1988 in the same house. He has produced in evidence a photostat copy of a certificate allegedly issued by Smt. Shakuntla Devi w/o Hari Kishan, resident of house no. 1125, Street no. 4, Circular Road, Abohar, dated 4th February, 1983, regarding his work and conduct being satisfactory, Ex. W/2.

This statement made by the workman although not subjected to cross-examination because of the management having been proceeded against *ex parte*, does not help the workman in any manner. The other evidence on the record also belies the correctness of his statement. As discussed above, the workman had not appeared before the enquiry officer on any date and he had been proceeded against

ex-parte. He had also not submitted any reply to the charge-sheet. The statement made by Rajinder Singh, MW/2, has gone unrebutted. Nothing had been put to him in his cross-examination to prove that the workman had submitted any reply to the charge-sheet and had also appeared before the enquiry officer on any date. Rajinder Singh had been present with the relevant record on the date on which he had appeared as a witness in this case. No copy of the reply to the charge-sheet has also been produced by the workman. In case he had submitted any such reply, he would have produced a copy of the same himself or he would have got the same produced from the management. Further, in case he had appeared before the enquiry officer, as stated by him, he would have asked about the same from Rajinder Singh, MW2, in his cross-examination but he had not done so. It is also not the case of the management that the address given by the workman is not correct. The case of the management is that the workman had not taken delivery of the letters, notices and charge-sheet sent to him at the said address. Similarly, the work and conduct of the workman being satisfactory in the year 1983 is not relevant. What is relevant is only the fact as to whether any enquiry had been held against the workman or not. As discussed above, it stands proved that an enquiry had duly been held against the workman in which the workman had not participated for the reasons best known to him.

As per provisions of the Punjab Civil Service (Punishment and Appeal) Rules, 1970, as amended in January, 1985, before imposing the penality of termination of services upon the workman, it was not necessary to give him an opportunity to making representation on the penality proposed to be imposed. In view of the circumstances, There was no necessity also to give him a personal hearing. he had not participated in the enquiry. On this account also, No fault can be found with the termination order. It may also be mentioned here that is not the case of the workman that the enquiry had been fair and proper. There is nothing in this regard in his statement of claim.

Any way, it also stands proved by the evidence on record that the workman had remained absent from duty without leave

and had been guilty of misconduct for which his services had come to be terminated by the management. The workman in his statement, as WW1, has not said even a word about this fact and has not offered any explanation at all about his absence from duty without leave. It is also not his case that leave had been due to him and the authority concerned had wrongfully rejected his leave application. There is also no evidence on the record that even after expiry of the period for which he had applied for leave, he had joined his duties or had offered to join his duties at the place of his posting. In his statement, as WW1, he had not said anything in this connection that he has not produced any documentary evidence. No representation had been submitted by him at any time. His statement that he had met the Director two-three times and has also met the Secretary is, in the circumstances, of no avail to him.

Hence, it is held that the termination of services of the workman is justified and in order. This issue is, therefore, decided in favour of the management and against the workman."

(7) A careful reading of the above extract of the award shows that the learned Presiding Officer has not at all applied mind to the fundamental issue, namely, whether the enquiry was held in accordance with the rules and the principles of natural justice. He overlooked the fact that the procedure prescribed in Rule 8 of the Rules of 1970 was not followed by the Enquiry Officer, inasmuch as no evidence was produced on behalf of the employer to prove the allegation of misconduct levelled against the petitioner and yet it held that the order passed by the Government is legally correct.

(8) Rules 8(2) and 14 of the Rules of 1970 which have direct bearing on one of the issues raised in this writ petition read as under:—

Rule 8(2) "Whenever the punishing authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviours against a Government employee, it may itself inquire into, or appoint under this rule or under the provisions of the Public

Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

XX XX XX

Rule 14 On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the punishing authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

(9) An analysis of the rules, quoted above, shows that the burden to prove the allegation of misconduct is on the employer unless the employee admits the articles of charges. In the present case, the petitioner did not admit the allegation levelled against him. Rather, he denied the charge and stated that his application for grant of leave was still pending. He also prayed for grant of long leave due to the illness of his daughter and other family circumstances. Unfortunately, the learned Presiding Officer of the Labour Court failed to address himself on the issue of violation of the rules. Instead, he upheld the order of punishment passed on the basis of the enquiry report which was totally laconic in all respects and which was prepared in a most arbitrary and casual manner, only on the ground that the petitioner had not appeared before the Enquiry Officer. This approach, in our considered opinion, is clearly erroneous because it is a settled principle of law that even if the delinquent does not participate in the enquiry proceedings, the department has to produce evidence to prove the charge of misconduct. Admittedly, this was not done in the case of the petitioner. Therefore, we do not have the slightest hesitation to hold that the finding recorded by the Labour Court on the issue of fairness of enquiry is not only erroneous but perverse.

(10) We also find substance in the contention of Shri Sibbal that the Labour Court has gravely erred by not exercising the jurisdiction vested in it under Section 11-A of 1957 Act. Section 11-A was inserted in the Act of 1947 w.e.f. 15th December, 1971. Prior to this, the Apex Court had indicated the limitation of the jurisdiction

of the Labour Court, Industrial Tribunal and the National Tribunal to interfere with the findings of guilt and the quantum of punishment awarded by the manageemnt in *Indian Iron and Steel Co. Ltd. v. Their Workmen*(1); *Punjab National Bank Ltd.* v. *Its Workmen* (2), *Management of Ritz Theatre (P) Ltd.* v. *Its Workmen*(3) and *M/s Hind Construction and Engineering Company Ltd.* v. *Their Workmen* (4). Their Lordships held that the Labour Court/ Tribunal cannot act as a Court of appeal and substitute its own judgment for that of the management. However, it will interfere where the action of the employer lacks good faith or where the employer is guilty of victimisation or unfair labour practice or violation of the principles of natural justice or where the punishment imposed by the employer is shockingly disproportionate keeping in view the particular conduct and past record of the employee.

(11) In order to clarify the position regarding the jurisdiction of adjudicating authorities constituted under the Act, Section 11-A was added. The statement of objects and reasons set out in the bill introducing Section 11-A of the Industrial Disputes Act read as under :

> "In India Iron and Steel Company Ltd. v. Their Workmen (Supra), the Supreme Court while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the service of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management." 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

(1) A.I.R. 1958 SC 130
(2) A.I.R. 1960 SC 160
(3) A.I.R. 1963 SC 295
(4) A.I.R. 1965 SC 917

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 recommendation, 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 term and conditions—if any, as it thinks fit or give such other reliefs to the workman 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 S. 11(A) is proposed to be inserted in the Industrial Disputes Act, 1947....."

(12) The ambit and scope of Section 11A came to be considered by the Supreme Court in *Workmen of M/s Firestone Tyre and Rubber Co.* v. *The Management*(5). In that case, the Apex Court in the first place referred to the law laid down by the Court in respect of the jurisdiction of the Industrial Tribunal/Labour Court. It also referred to the statement of Objects and Reasons and then proceeded to say:—

"The object is stated to be that the Tribunal should have power in cases, where necesary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment."

Their lordships further held that, "Even a mere reading of the Section, in our opinion, does not indicate that a change in the law as laid down by this Court has been effected."

(13) Their lordships noticed the contentions urged on behalf of the employees and employers, referred to some of the principles relating to interpretation of welfare legislation and held that even after Section 11-A has been inserted the employer and employee

(5) A.I.R. 1973 S.C. 1227

can adduce evidence regarding legality and validity of the domestic enquiry, if one had been held by an employer. The Court further held that the Tribunal has to consider the evidence and come to the conclusion one way or the other. Even in cases, where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal has the power to differ from that finding in an appropriate case and hold that no misconduct is proved. The Court further observed :—

> "It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal on discharge. The Tribunal may also hold that the order of discharge or dismissal not justified because the alleged misconduct, itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately, it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reppraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute it for the first time. Both categories are now put on a par by Section 11-A."

(14) On the question of quantum of punishment their Lordships held that prior to Section 11-A the Tribunal had no power to interfere with the punishment imposed by the Management and it had to sustain the order of punishment imposed on the basis of proved misconduct unless it was harsh indicating vicimisation, but, under Section 11-A, even if misconduct is held to be proved, the Tribunal may be of the opinion that the order of discharge or dismissal for the particular act of misconduct is not justified. The Tribunal may hold that the proved misconduct does not warrant imposition of penalty by way of discharge or dismissal and it can under such circumstances award to the workman lesser punishment.

(15) In para 45 of the judgment, their Lordships of the Supreme Court took notice of the departure made by the Legislature in certain respects is the law laid down by the Supreme Court by observing that for the first time power has been given to the Tribunal to satisfy itself whether misconduct is proved. This is particularly so even when findings have been recorded by an employer in an inquiry properly held. The Tribunal has also been given power to interfere with the punishment imposed by an employer. The proviso to Section 11-A emphasizes that the Tribunal has to satisfy itself one way or the other regarding misconduct, punishment and the relief to be granted to the workman only on the basis of material on record before it. In para 48 their Lordships further observed that even if a proper inquiry is conducted and a finding is arrived at regarding misconduct, the Tribunal has the power to differ from the employer and even reduce the punishment. In para 58 of the judgment their Lordships again reiterated this proposition by making following observations:—

> "We have already expressed our view regarding the interpretation of Section 11-A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognised certain managerial rights in an employer. We have pointed out that this position has now been changed by Section 11A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him."

(16) In C.W.P. No. 11456 of 1994 *Pepsu Road Transport Corporation, Patiala and another* v. *Presiding Officer, Labour Court, Jalandhar and another,* decided on 23rd November, 1994, this Court after a review of various decisions laid down the following proposition of law :

> "While exercising its powers under Section 11-A, the Labour Court/Tribunal should consider the question of fairness of the enquiry in the first instance. In case, it is found that the enquiry is not fair, employer can make a request to be given permission to lead evidence for proving the misconduct. In that event, the employee has also to be given an opportunity to lead evidence in his defence. In both types of cases namely where the enquiry is held to be fair and also where it is held to be unfair, but opportunity is given to the employer to lead evidence in support of the plea of misconduct, the Labour Court has to examine the evidence and record its own finding on the allegations of mis-conduct. *If it holds that mis-conduct is proved, it has further to consider as to whether the punishment imposed by the employer is just or not. While doing so the Labour Court etc. must also look into the entire record including past punishment, if any, nature of misconduct committed by the employee, his length of service and the impact of misconduct on the industry/service and then decide as to whether punishment is unjust.* If its conclusion is in positive, the Labour Court can substitute the punishment awarded to the employee with lesser punishment."

(17) In C.W.P.No. 3307 of 1989 *Mangat Rai* v. *Pepsu Road Transport Corporation and another,* decided on 8th January, 1998, this Court considered the scope of Section 11-A and laid down the following principles :—

> "An analysis of these decision shows that the Supreme Court and the High Courts have unequivocally recognised the legislative authorisation to the Labour Courts/Tribunals under Section 11-A of the Act to Examine the issue relating to fairness of the departmental/domestic enquiry, the merits of the findings recorded during the course of such enquiry as well as the issue relating to punishment. *The Courts have consistently held that in appropriate cases the Labour Court and the Tribunal can substitute the punishment awarded by the employer with a lesser punishment, if on an objective analysis of the facts of a given case it comes to*

the conclusion that the punishment awarded by the employer is unjust or shockingly disproportionate or unduly harsh. In what circumstances the Labour Court or Tribunal may interfere with the punishment awarded by the employer depends on the facts of the particular case and no hard and fast rule can be laid down."

(18) If we examine the impugned award in the light of the principles laid down by the Supreme Court and by this Court on the ambit and scope of Section 11-A, it can reasonably be said that the Labour Court has failed to exercise its jurisdiction under Section 11-A. The Learned Presiding Officer has not at all considered whether the punishment of dismissal imposed by the government is just or not and whether any other punishment can meet the ends of justice. The past record of the petitioner, the length of his service and the impact of his alleged mis-conduct on the service have not at all been taken into consideration while upholding the dismissal of the petitioner from service.

(19) On the basis of the above discussion, we hold that the impugned award is vitiated due to the failure of the Labour Court to exercise the jurisdiction vested in it under Section 11-A and also on the ground that it suffers from an error of law apparent on the face of it.

(20) Consequently, the writ petition is allowed. The award dated 13th February, 1996 is quashed and the case is remanded to the Labour Court for fresh decision in accordance with law. The Labour Court, Bhatinda is directed to complete the proceedings within 6 months of the receipt of certified copy of this order.

(21) The Registry is directed to forward a copy of the order to the Labour Court, Bhatinda.

J.S.T.

Before Sat Pal, J

SATISH BHARDWAJ,—*Petitioner.*

versus

DHANI RAM & OTHERS.—*Respondents.*

C.R. No. 2084 OF 1997

9th February, 1998

Code of Civil Procedure, 1908—Order 23 Rl. 7-Suit decreed-Appeal filed-Plaintff filed applicaation seeking permission to