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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 490/2014

DELHI TRANSPORT CORPORATION .....Appellant
Through: Ms. Aliza Alam for Mrs. Avnish Ahlawat SC DTC

versus

SH. BAHADUR SINGH .....Respondent
Through: Mr. Vivek Sood, Sr. Advocate with Mr. Abhishek Verma, Ms. Pankhuri Jain, Ms. Medhavi Judevi and Mr. Amitanshu Satyarthi, ADvs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 27.02.2026

C. HARI SHANKAR, J.

1. Following a strike which took place in its premises between 17 to 19 March 1988, the Delhi Transport Corporation[1] dismissed a large number of its employees, invoking the provisions of the Essential Services Maintenance Act, 1981 read with the second proviso to Regulation 15(2)(c) of the Delhi Road Transport Authority (Conditions of Appointment & Service) Regulations, 1952. The dismissed employees approached this Court by way of various writ petitions alleging violation of Section 33 of the Industrial Disputes

[1] "DTC", hereinafter

Act, 1947[2]. A Division Bench of this Court, *vide* order dated 20 December 1988, directed the petitioners to pursue their remedies in terms of Section 33 of the ID Act and, wherever orders of punishment had been passed, relegated the petitioners to the competent appellate authority. Even in the event that the punishment was found to be in contravention of Section 33 of the ID Act, the Court, in conformity with the said provision, directed the Industrial Disputes Tribunal[3] to further examine whether the order of discharge or dismissal passed by the DTC was justified on merits.

2. We are concerned in this case only with one of the said striking employees i.e. Bahadur Singh, the respondent before us.

3. On 4 April 1989, a notice was sent to the respondent directing him to appear before the Appellate Authority. The respondent did so and denied the charges against him. The Appellate Authority, *vide* order dated 24 March 1988, confirmed the decision to dismiss the respondent from service. The respondent approached the Tribunal under Section 33 of the ID Act seeking quashing of the order dated 24 March 1988 whereby he was dismissed from service and consequently seeking reinstatement with full back wages, etc.

4. The Tribunal, *vide* order dated 11 August 1999, found that the dismissal was in violation of Section 33 of the ID Act. The DTC, however, sought permission to prove the charges against the respondent on merits. In these circumstances, the Tribunal framed the

[2] "ID Act", hereinafter
[3] "the Tribunal" hereinafter

following issues for consideration :

> "(a) Whether the respondent joined the strike and committed misconduct as alleged in the reply to the complaint filed under Section 33A of the I.D Act.
>
> (b) Relief."

5. The Tribunal held the finding of misconduct against the respondent to be justified as he had admittedly participated in the strike. However, the Tribunal found the penalty of dismissal imposed upon him to be disproportionate to his misconduct and accordingly, modified the penalty, directing reinstatement of the respondent with continuity in service and 25% back wages.

6. The DTC assailed the aforesaid decision of the Tribunal before this Court in a batch of writ petitions, which included WP (C) 6863/2001 instituted by the respondent. By order dated 3 February 2005, this Court dismissed all the writ petitions. LPA 1634/2005 was preferred by the DTC against the said decision. The Division Bench of this Court, *vide* its judgment in ***DTC v. Jagbhushan Lal***[4], held that the learned Single Judge had erred in clubbing the writ petition with other writ petitions, as the present writ petition dealt with a case in which a finding of misconduct had been returned against the respondent. Accordingly, WP (C) 6863/2001 was remanded for reconsideration by the learned Single Judge.

7. It is thus that the presently impugned judgment has come to be passed, consequent on the said remand proceedings.

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[4] **132 (2006) DLT 384 (DB)**

8. In view of the finding that the respondent was an employee against whom there is a positive finding of misconduct, the learned Single Judge correctly noted that the only issue for consideration by him was as to whether the Industrial Tribunal had correctly interfered with the quantum of penalty, treating it as disproportionate to the misconduct committed by the respondent. In this regard, the learned Single Judge holds thus, in paras 12 and 13 of the impugned judgment:

> "12. Now the only question which needs to be considered in this case is whether the conclusion of the Tribunal on issue No.2 that the penalty of dismissal is dis-proportionate to the misconduct of the respondent No.1. The law is well settled in this regard. The reasoning given by the Tribunal in holding that the penalty of dismissal is disproportionate is that the respondent No.1 participated in the strike and instigated the workers to strike the work and he did so in response to the cause of the employees of the DTC. According to the Tribunal the employees were asking for the implementation of recommendations of the 4th Pay Commission. The Tribunal adjudicated the matter in favour of the workmen. The cause for which the respondent No.1 committed misconduct was common to all the employees. That apart the Tribunal also observed that the petitioner intended to consider the case of the respondent No.1 for reinstatement subject to fulfilling certain conditions including expressing of regret for joining the strike.
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> 13. I find that the Tribunal has given justifiable reasons in interfering with the order of penalty."

9. Having thus found that there was no error in the decision of the Industrial Tribunal, to the extent it held the punishment of dismissal from service imposed on the respondent to be disproportionate to the misconduct committed by him, the learned Single Judge held that the Industrial Tribunal was not justified in directing reinstatement with continuity of service and 25% back wages on the last drawn wages, as

this was not one of the penalties envisaged in Rule 15(2) of the Regulations.

10. The learned Single Judge was, however, of the view that, as the misconduct found against the petitioner was not one which justified his removal or dismissal from service, the DTC was required to re-examine the aspect of the penalty to be imposed. Consequently, the respondent was directed to be reinstated in service and the DTC was directed to re-consider the aspect of the penalty to be awarded to him.

11. Paras 14 and 15 of the impugned judgment, which contain the operative directions of the learned Single Judge read thus:

> "14. The Tribunal on a view that the penalty was disproportionate should have confined itself to the listed penalties and not anything beyond it. Since the Tribunal has failed to substitute the penalty of dismissal with the listed penalties, this Court is of the view that the appropriate would be to remand the case back to the Appellate Authority keeping in view the conclusion of the Tribunal that the penalty of dismissal being disproportionate to the misconduct, and the penalty of removal would also entail forfeiture of the entire service, appropriate listed penalty except the penalty of removal and dismissal be imposed and the said penalty would relate back to the date of the award i.e. August 14, 2000. The respondent No.l would stand reinstated (if not attained the age of superannuation) in view of the limited scope of penalty to be imposed by the Appellate Authority, and on such penalty the respondent No.l would be entitled to the arrears of pay with effect from August 14, 2000 only. It is made clear that the respondent No.l would not be entitled to any back wages between the period March 24, 1988 till August 14, 2000 but the said period would be treated on duty for the purpose of seniority, promotion, notional increments/pay fixation and pension etc. Accordingly, I set aside the order of the Tribunal to the limited extent the Tribunal had granted the relief of reinstatement and continuity in service with25% back wages on last wages drawn.
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> 15. The Appellate Authority shall pass appropriate orders on

penalty in terms of the directions in para No. 14 of this order within a period of 2 months from today and grant benefits, thereon within two months thereafter. The writ petition is accordingly allowed in terms of the above."

12. Aggrieved by the aforesaid judgment, the DTC has filed the present LPA.

13. We have heard Ms. Aliza Alam, learned Counsel for the DTC/appellant and Mr. Vivek Sood, learned Senior Counsel for the employee/respondent.

14. Ms. Alam submits that the learned Single Judge was in error, inasmuch as he failed to notice that the Tribunal had not returned any positive findings as were required to be returned in law before arriving at a conclusion that the punishment of dismissal from service, awarded to the respondent for the misconduct committed by him, was disproportionate.

15. She has placed reliance on para 30 of ***Hombe Gowda Educational Trust v. State of Karnataka***[5], para 18 of ***Indian Iron & Steel Co. Ltd. v. Their Workmen***[6] and para 14 of ***U.B. Gadhe & Ors. v. G.M. Gujarat Ambuja Cement Pvt. Ltd***[7], all rendered by the Supreme Court**.**

16. We have considered the submissions but do not find any case made out for us to interfere with the decision of the learned Single

[5] **(2006) 1 SCC 430**
[6] **AIR 1958 SC 130**
[7] **(2007) 13 SCC 634**

Judge.

17. The scope of letters patent jurisdiction is essentially correctional in nature, as has been held by the Supreme Court in the following passage from ***Baddula Lakshmaiah v. Sri Anjaneya Swami Temple[8]:***

> "A letters patent appeal as permitted under the letters patent is normally an intra-Court appeal whereunder Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the single Bench. Such is not an appeal against an order of a subordinate Court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language".

18. This Court, therefore, does not sit as a classical Court of appeal while exercising letters patent jurisdiction over the judgment of the learned Single Judge. It is only if the judgment of the learned Single Judge suffers from any patent error that the Court would interfere in the matter.

19. Moreover, the learned Single Judge, too, while exercising Article 227 jurisdiction over the judgment of the Industrial Tribunal, also does not sit as a Court of appeal. It is only where the Tribunal has not correctly discharged his duties, or where the findings and decision of the Industrial Tribunal are patently unsustainable on the facts and the law which are available, that the Court would interfere.

20. In the present case, though Ms. Alam sought to contend that the Industrial Tribunal had not returned any reasons for arriving at its

[8] **(1996) 3 SCC 52**

finding that the penalty of dismissal was disproportionate to the misconduct committed by the respondent, we do not find this to be the correct position. In fact, in para 12 of the impugned judgment, the learned Single Judge has noted the reasons adduced by the Industrial Tribunal and has, in para 13, found that they did not merit interference.

21. We would be loath, in exercise of our letters patent jurisdiction, to sit in appeal over this decision.

22. The judgments on which Ms. Alam places reliance are clearly distinguishable.

23. ***Hombe Gowda*** dealt with assault, both verbal and physical, by a teacher, on the principal of the institution. The Supreme Court has noted, in para 19 of its judgment, as under:

> 19. Assaulting a superior at a workplace amounts to an act of gross indiscipline. The respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as to shock one's conscience.

The Court also emphasized the fact that such misconduct in an educational institution was inexcusable:

> 29. Indiscipline in an educational institution should not be tolerated. Only because the Principal of the institution had not been proceeded against, the same by itself cannot be a ground for not exercising the discretionary jurisdiction by us. It may or may not be that the management was selectively vindictive but no management can ignore a serious lapse on the part of a teacher whose conduct should be an example to the pupils.

It was in this context that the Supreme Court, in para 30 of the judgment – on which Ms. Alam relies – reiterated the well-settled principles regarding proportionality of punishment in disciplinary proceedings in industrial disputes:

> 30. This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same.

24. ***Indian Iron & Steel*** laid down the standards to be followed while interfering with the finding of misconduct, and not with respect to proportionality of punishment.

25. ***U.B. Gadhe*** was a case involving, apart from participation in a strike in a public utility service *which continued for over five months*, disorderly behaviour and conduct, shouting of slogans inside the factory premises, commission of nuisance, and even making false, vicious and malicious statements against the management in public. The employees concerned were found to be the leaders in the strike. There can be no manner of doubt that persons who instigate, and

continue, a strike in a public utility enterprise for five months have no right whatsoever to continue in service, and that dismissal of such persons cannot, by any stretch of imagination, be regarded as disproportionate. *Per contra*, the strike, in the present case, was for *2 days*.

26. The Supreme Court has reiterated, times without number, that the *ratio decidendi* of its decisions has to be understood in the backdrop of the facts and the dispute before it, except where the Supreme Court declares the law as an absolute proposition. Else, judgments of Courts are not to be likened to Euclid's theorems.[9]

27. Accordingly, we do not find this to be a case which calls for interreference with the judgment of the learned Single Judge. The LPA is, accordingly, dismissed. The stay granted on 12 November 2025 stands vacated. Compliance with the impugned order be ensured within a period of eight weeks from today.

28. No costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 27, 2026*/yg*

[9] Refer **Haryana Financial Corpn. v. Jagdamba Oil Mills, (2002) 3 SCC 496**