Justice K Chandru

Reinstatement and Backwages

KEEP CALM

AND BY THE WAY,

YOU'RE FIRED..!

The Supreme Court while interpreting the power of the Labour Court to interfere with the disciplinary action taken by the employer had put an embargo in the Indian Iron & Steel Company’s case.

HELD

:

"In cases of dismissal on misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse"

Indian Iron & Steel Co., Ltd. & ...

Vs.

Their Workmen, AIR 1958 SC1 30 = 1958 SCR 667

The Parliament introduced Section 11A with effect from 15.12.1971

- it was stated that the Indian Iron & Steel company's case curtailed the powers of the Labour Court &
- in order to give effect to the ILO resolution no. 119 wherein by which it was directed that the law must provide
- for a third party neutral arbitrator
- to go into the imposition of the penalty imposed on the employee but
- the court should have power to interfere on those penalties.

In order to overcome the embargo imposed by the Supreme Court on the adjudicating authorities under the ID Act, the Parliament amended the act and introduced Section 11A with effect from 15.12.1971.

objects and reasons

"that the Indian Iron & Steel company's case curtails the power of the Labour Court and in order to give effect to the ILO resolution no. 119 wherein by which it was stipulated that the law must provide for a third party neutral arbitrator to go into the position of the penalty imposed on the employee but also must have power to interfere on such penalties."

Section 11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, 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 workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

Section 11A : The object of introducing Section 11A as found in the objects and reasons appended to the Bill was that the Labour Courts/Tribunals must have power to interfere with the quantum of penalty imposed by an employer. This was to give effect to the international obligation found in Resolution No.119 of the I.L.O.(1963) wherein it was agreed by the ratifying countries to have a law by which any punishment of removal imposed by employers must have an approval by a third party neutral observers.

This section was interpreted by the Supreme Court in Workman of M/s. Firestone tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management reported in **1973 (1) SCC 813. The Supreme Court held that after the introduction of the provision, the Labour Court's power is akin to that of an appellate court.**

Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry & satisfy itself whether the evidence, established the misconduct

Limitation imposed by the decision in Indian Iron & Steel Co. Ltd. case is no more available.

- **Tribunal is now at liberty to consider whether the finding of misconduct recorded by an employer is 'correct;**
  but also to differ from the said findings
- **What was once the satisfaction of the employer, now satisfaction of the Tribunal that finally decides the matter**

Workmen Of Messrs Firestone Tyre ...

Vs.

Management & Others

AIR 1973 SC 1227= 1973 SCR (3) 587 = 1973 (1) SCC 813

Supreme Court on 11-A

"after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited"

.....

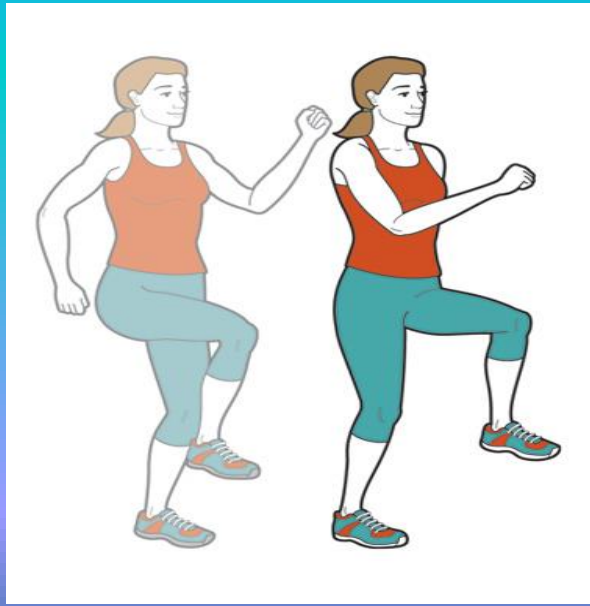
“The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment” …….

"In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment"

Mahindra and Mahindra Ltd
Vs.
N.B.Narawade
[2005(3) SCC 134]

After 11A

Step 1



The Labour Court will have to do the following exercises:

To find out whether the enquiry held by the employer is contrary to the certified standing orders or is vitiated on account of violation of Principles of Natural Justice

After 11A

Step 2

In case the enquiry is vitiated

- **and if the employer seeks to lead fresh evidence by making a proper application**

  then evidence will be recorded by the Labour Court.
- **If the employer do not seek to lead any fresh evidence then there is no obligation**

  to provide any opportunity to lead fresh evidence
- **and it can straight away order reinstatement by holding it was a case of no evidence.**

Karnataka SRTC

Vs.

Lakshmidevamma

2001 (5) SCC 433

After 11A Step 3

If the enquiry was held to be valid, then the Labour Court can re-appreciate the evidence recorded by the employer & can also come to different conclusions. In essence the power of the court is that of an appellate court.

Workmen Of Messrs Firestone Tyre ...
Vs.
Management & Others
AIR 1973 SC 1227= 1973 SCR (3) 587 = 1973 (1) SCC 813

After 11A Step 4

Labour Court has power to interfere with the penalty
if it is satisfied
that the penalty was not justified &
can direct reinstatement with consequential
benefits.
Alternatively,
the Labour Court can also impose a lesser penalty.

Ever since the section was notified (i.e. 15.12.1971) the Labour Courts/Tribunals were exercising their powers and most of the times, their awards were upheld by various High Courts and by the Supreme Court.

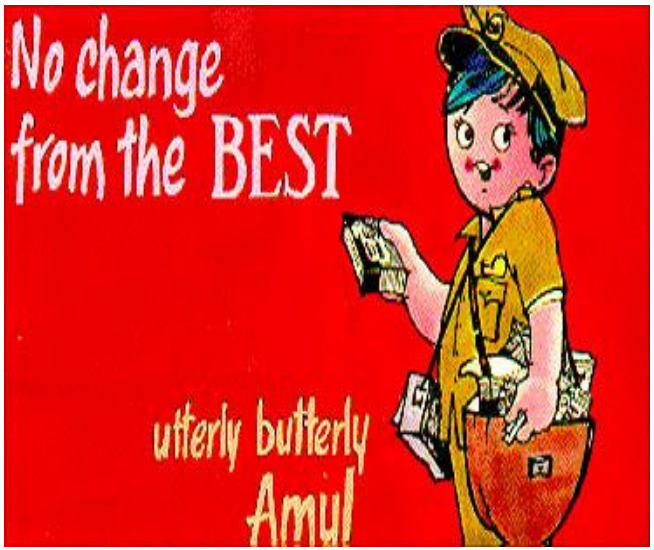
But since late 2000, the decision of the Supreme Court has taken the law backwards by virtually putting an embargo on the power and almost denied such a power to the Labour Courts by their judicial interpretation.

No Interference U/S 11A - 1

In cases of Bus Conductors not issuing tickets but collecting fares no reinstatement to be ordered even if it involves petty amount

Regional Manager, RSRTC
Vs.
Sohan Lal
(2004 (8) SCC 218)

V.Ramana
Vs.
APSRTC
2005 (7) SCC 338)



No Interference U/S 11A - 2

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.

LK Verma

Vs.

HMT Ltd

AIR 2006 SC 975

No Interference U/S 11A - 3

Absence from duty

must be viewed strictly

We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society”

“Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove."

M/S. L&T Komatsu Ltd

Vs.

N. Udayakumar

No Interference U/S 11A - 4

Assault against Superiors

"The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal.“

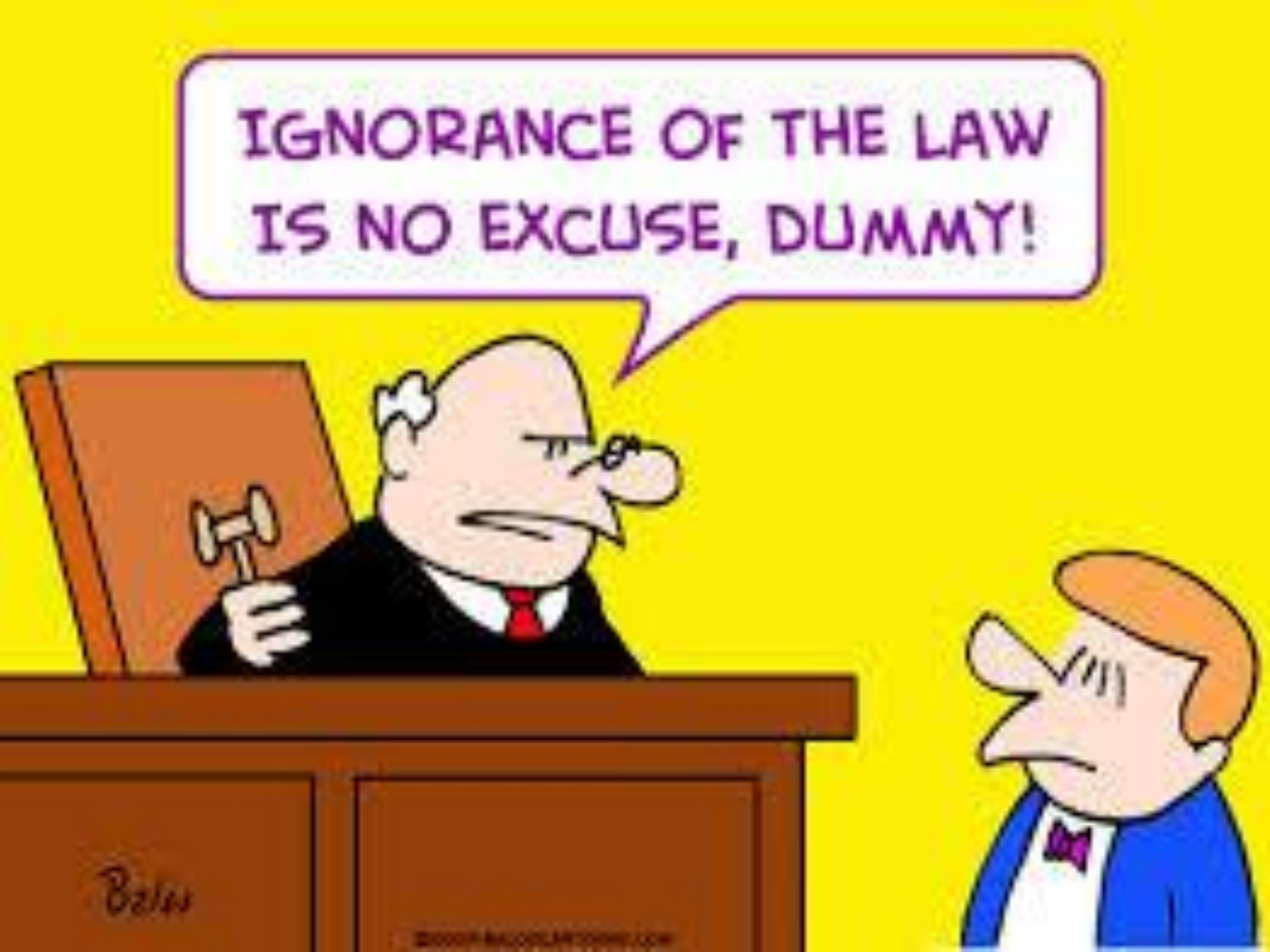
Muriadih Colliery BCC Ltd

Vs.

Bihar Colliery Kamgar Union

2005 (3) SCC 331

All these decisions are in the teeth of the language of Section 11A fulfilled an obligation mandated by ILO. In very many other spheres off late, the Supreme Court had pressed into service the "Wednesbury principle" and the theory of proportionality and reasonableness to review the State actions.


IGNORANCE OF THE LAW IS NO EXCUSE, DUMMY!

Materials on Record – what it means?

- The proviso to 11A makes a tricky reading. What is the "material on record" and the bar of taking fresh evidence came to be considered in Workmen of Firestone case.
- If an enquiry held by the employer is set aside and if fresh enquiry is ordered by the labour court then no part of the evidence recorded in the enquiry conducted by the employer can be relied upon by the labour court.

Neeta Kaplish

Vs.

The Presiding Officer, Labour Court and another

1999 (1) SCC 517

Burden of proof shifted on workmen regarding Proof on the length of their service:

1. R.M.Yellati

Vs.

Asst. Executive Engineer

2006 (1)SCC 106

2. Rajasthan State Ganganagar S Mills Ltd.

Vs.

State of Rajasthan & anr.

2004 (8) SCC 161

3. Municipal Corporation, Faridabad

Vs.

Sirinivas

2004 (8) SCC 195

failure to seek for approval under Sec 33(2)(b) will vitiate the order of termination since the provision is mandatory

In such cases the order passed by the employer is ab-initio void

Jaipur Zila ShahaKari Boomi Vikas Bank Ltd

Vs.

Ram Gopal Sharma

2002 (2) SCC 244

Backwages when can be ordered?

“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 litigating activity of the employer’

Hindustan Tin Works Pvt. Ltd
Vs.
Employees Of Hindustan Tin Works
AIR 1979 SC 75

Should the workmen plead for backwages? YES!

"It is not in dispute that the Respondent did not raise any plea in his written statement that he was not gainfully employed during the said period……it was for the employer to raise the aforementioned plea but having regard to the provisions of section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman."

U.P.State Brassware Corporation Ltd and Anr. Vs. Uday Narain Pandey, 2006 (1) SCC 479

Should the workmen plead for backwages?

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.

Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed) & Ors

2013(10) SCC 324

Loss of Confidence – whether a ground for denial of Reinstatement?

Loss of confidence is no new Armour for the management; otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court can be subverted by this neo formula Loss of confidence in the law will be the consequence of the Loss of Confidence doctrine.

L. Michael & Anr

Vs.

M/S.Johnston Pumps India Ltd

AIR 1975 SC 661

THANK YOU