

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE VIVEK RUSIA**

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**SET -A**

**MISC. PETITION No. 3225 of 2023**

**BETWEEN:-**

**D AND H SECHERON ELECTRODES PVT. LTD. THR ITS FACTORY  
MANAGER SHRI SURESH CHOUHAN 44-46 INDUSTRIAL AREA KILLA  
MAIDAN DISTRICT INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
PETITIONER.)***

**AND**

**DINESH S/O SHRI JAI NARAYAN CHOUDHARY 237, SATELLITE  
TOWNSHIP NIHALPUR MANDI A.B. ROAD, DISTRICT INDORE (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)***

**MISC. PETITION No. 3229 of 2023**

**BETWEEN:-**

**D AND H SECHERON ELECTRODES PVT. LTD. THROUGH ITS FACTORY  
MANAGER 44-46 INDUSTRIAL AREA KILLA MAIDAN DISTRICT INDORE  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
PETITIONER.)***

**AND**

**BINDESHWARI PRASAD S/O SHRI SHRINATH MISHRA 85 RADHIKA SOCIETY KHATIPURA ROAD, DISTRICT INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)***

**MISC. PETITION No. 3298 of 2023**

**BETWEEN:-**

**D AND H SECHERON ELECTRODES PVT. LTD THROUGH ITS FACTORY MANAGER 44-46 INDUSTRIAL AREA KILLA MAIDAN DISTRICT INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE PETITIONER.)***

**AND**

**SANTOSH S/O SHRI RAM DULARE KUSHWAH 89/4, BHAGATSINGH NAGAR INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)***

**MISC. PETITION No. 3299 of 2023**

**BETWEEN:-**

**D AND H SECHERON ELECTRODES PVT. LTD. THROUGH ITS FACTORY MANAGER 44-46 INDUSTRIAL AREA KILLA MAIDAN DISTRICT INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE PETITIONER.)***

**AND**

**MUKESH S/O SHRI RAGHU NANDAN KAUSHAL 6 KUMHAR KHADI INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

*(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)*

**MISC. PETITION No. 3363 of 2023**

**BETWEEN:-**

**D AND H SECHERON ELECTRODES PVT. LTD THROUGH ITS FACTORY  
MANAGER 44-46 INDUSTRIAL AREA KILLA MAIDAN DISTRICT INDORE  
(MADHYA PRADESH)**

**.....PETITIONER**

*(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
PETITIONER.)*

**AND**

**LEKHRAJ S/O SHRI JAGNNATH YADAV R/O 73, NAYAPURA AERODROME  
ROAD INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

*(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)*

**MISC. PETITION No. 3365 of 2023**

**BETWEEN:-**

**D AND H SECHERON ELECTRODES PVT. LTD. THROUGH ITS FACTORY  
MANAGER 44-46 INDUSTRIAL AREA KILLA MAIDAN DISTRICT INDORE  
(MADHYA PRADESH)**

**.....PETITIONER**

*(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
PETITIONER.)*

**AND**

**RAMESH S/O SHRI RAMGOPAL YADAV R/O 41 KAMLA NEHRU COLONY  
INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

*(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)*

**MISC. PETITION No. 3366 of 2023**

**BETWEEN:-**

**D AND H SECHERON ELECTRODES PVT.LTD. THROUGH ITS FACTORY  
MANAGER 44-46 INDUSTRIAL AREA KILLA MAIDAN DISTRICT INDORE  
(MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
PETITIONER.)***

**AND**

**SHIVNARAYAN S/O SHRI AMARSINGH MALVIYA R/O 75 PARIHAR  
COLONY INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)***

**MISC. PETITION No. 3603 of 2023**

**BETWEEN:-**

**D AND H SECHERON ELECTRODES PVT.LTD FACTORY MANAGER 44-46  
INDUSTRIAL AREA KILLA MAIDAN DISTRICT INDORE (MADHYA  
PRADESH)**

**.....PETITIONER**

***(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
PETITIONER.)***

**AND**

**HARENDRA SINGH S/O SHRI SOBARAM SINGH TOMAR R/O 42 GANGA  
BAGH COLONY INDORE AT PRESENT 41 KAMLA NEHRU COLONY  
INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)***

**SET -B**

**MISC. PETITION No. 5273 of 2023**

**BETWEEN:-**

**SANTOSH KUSHWAH S/O RAMDULARE KUSHWAH, AGED ABOUT 54 YEARS, OCCUPATION: NIL R/O 89/4 BHAGATSINGH NAGAR INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)***

**AND**

**D AND H SECHERON ELECTRODES PVT. LTD. FACTORY MANAGER 44-46 INDUSTRIAL ESTATE KILA MAIDAN INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE RESPONDENT.)***

**MISC. PETITION No. 5292 of 2023**

**BETWEEN:-**

**SHIVNARAYAN MALVIYA S/O AMARSINGH MALVIYA, AGED ABOUT 56 YEARS, OCCUPATION: NIL 75, PARIHAR COLONY, AERODRUM ROAD, INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)***

**AND**

**D AND H SECHERON ELECTRODES PVT. LTD. FACTORY MANAGER 44-46, INDUSTRIAL ESTATE, KILA MAIDAN, INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE RESPONDENT.)***

**MISC. PETITION No. 5293 of 2023**

**BETWEEN:-**

**RAMESH YADAV S/O RAMGOPAL YADAV, AGED ABOUT 57 YEARS, OCCUPATION: NIL R/O KAMLA NEHRU COLONY 41 KILAMIDAN ROAD INDORE (MADHYA PRADESH)**

.....PETITIONER

*(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)*

**AND**

**D AND H SECHERON ELECTRODES PVT.LTD FACTORY MANAGER 44-46  
INDUSTRIAL ESTATE KILA MAIDAN INDORE (MADHYA PRADESH)**

.....RESPONDENTS

*(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
RESPONDENT.)*

**MISC. PETITION No. 5297 of 2023**

**BETWEEN:-**

**LEKHRAJ S/O JAGANNATH YADAV, AGED ABOUT 57 YEARS,  
OCCUPATION: NIL R/O 73 NAYAPURA AERODRUM ROAD INDORE  
(MADHYA PRADESH)**

.....PETITIONER

*(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)*

**AND**

**D AND H SECHERON ELECTRODES PVT.LTD FACTORY MANAGER 44-46  
INDUSTRIAL ESTATE KILA MAIDAN INDORE (MADHYA PRADESH)**

.....RESPONDENTS

*(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
RESPONDENT.)*

**MISC. PETITION No. 5298 of 2023**

**BETWEEN:-**

**HARENDRA SINGH TOMAR S/O SOBRAN SINGH TOMAR, AGED ABOUT  
61 YEARS, OCCUPATION: NIL R/O 42 GANGA WAGH COLONY TIKARIYA  
ROAD INDORE (MADHYA PRADESH)**

.....PETITIONER

*(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)*

**AND**

**D AND H SECHERON ELECTRODES PVT.LTD FACTORY MANAGER 44-46  
INDUSTRIAL ESTATE KILA MAIDAN INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
RESPONDENT.)**

**MISC. PETITION No. 5299 of 2023**

**BETWEEN:-**

**MUKESH KAUSHAL S/O RAGHUNANDAN, AGED ABOUT 63 YEARS,  
OCCUPATION: NIL R/O 6 KUMARKHADI INDORE (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)**

**AND**

**D AND H SECHERON ELECTRODES PVT.LTD FACTORY MANAGER 44-46  
INDUSTRIAL ESTATE KILA MAIDAN INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE  
ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE  
RESPONDENT.)**

**MISC. PETITION No. 5300 of 2023**

**BETWEEN:-**

**BINDESHWARI PRASAD MISHRA S/O LATE SHRINATH, AGED ABOUT 54  
YEARS, OCCUPATION: NIL 95, RADHIKA SOCIETY, KHATIPURA, MAIN  
ROAD, INDORE (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)**

**AND**

**D AND H SECHERON ELECTRODES PVT. LTD. FACTORY MANAGER 44-  
46, INDUSTRIAL ESTATE, KILA MAIDAN, INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE ALONG**

*WITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE RESPONDENT.)*

**MISC. PETITION No. 5301 of 2023**

**BETWEEN:-**

**DINESH CHOUDHARY S/O JAYNARAYAN CHOUDHARY, AGED ABOUT 57 YEARS, OCCUPATION: NIL 237, SATELLITE TOWNSHIP, MUNDI ROAD INDORE (MADHYA PRADESH)**

**.....PETITIONER**

*(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE.)*

**AND**

**D AND H SECHERON ELECTRODES PVT. LTD. FACTORY MANAGER 44-46, INDUSTRIAL ESTATE, KILA MAIDAN, INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

*(BY SHRI GIRISH PATWARDHAN, LEARNED SENIOR ADVOCATE ALONGWITH SHRI OSHIN UPADHYAY, LEARNED COUNSEL FOR THE RESPONDENT.)*

*Reserved on* : 05.03.2024

*Pronounced on* : 14.03.2024

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*This petition coming on for orders this day, the court passed the following:*

**ORDER**

Regard being had to the similitude of the controversy involved in the present cases, with the joint request of the parties, these Miscellaneous Petitions are finally heard and decided by this common order.

***Impugned Award of the Labour Court:***

**02.** The petitioner D & H Secheron Electrodes Pvt. Ltd. (hereinafter referred to as “**the Employer**”) has filed the writ petitions (hereinafter referred to as “**SET-A**”) challenging the order dated 16.02.2022 whereby the Departmental Enquiry was vitiated as illegal and award

dated 28.04.2023 was passed whereby respondent has been directed to reinstate the employees with 50% back wages.

**03.** Another set of writ petitions (hereinafter referred to as the “**SET-B**”) are filed by respondents (hereinafter referred to as “**the workmen**”) challenging the award dated 28.04.2023 to the extent of grant of 50% back wages against their claim of 100% back wages.

***Factual background:***

**04.** The Employer is a company engaged in the business of manufacturing and sale of different grades of electrodes in its manufacturing unit at 44-46 Industrial Area, Killa Maidan, Indore (M.P.). In the year 2014-15, there was a demand made by workers/employees through the Registered Trade Union for their wage revisions from the employer. The workmen were the office bearers of the trade union. The Employer was served with the letter of demand by the Union and because of the delay in consideration, there was some agitation going on in the factory premises. On 18.07.2015, the workmen entered into the cabin of Shri M.D. Khatri, the Managing Director misbehaved with him. They vandalized the cabin and manhandled him Thereafter, they caught hold of Piyush Panthari, Executive Assistant of the Vice Chairman and Prakash Ramani when they were working in the Plant, abused them and beaten up threatening to see the dare consequences if their demands were not fulfilled.

**05.** The Employer lodged a police complaint against them. The injured executives were sent to the hospital for medical treatment. Thereafter, charge-sheets were served to the workmen and after that regular enquiry was conducted. After submitting the enquiry report, the management took a decision to terminate the services of workmen. The respondent workmen raised an industrial dispute before the Labour Court Indore which was registered as Reference Case No.91/ID/2016.

The Employer submitted a written statement to contest the reference.

**06.** The workmen challenged the illegality and validity of the Domestic Enquiry hence the learned Labour Court took up the same as the preliminary issue. Vide order dated 16.02.2022, the Learned Labour Court has held that the domestic enquiry is vitiated. The employer sought an opportunity to prove the misconduct before the Labour Court. The petitioner in order to prove the charge-sheet against the workmen examined Piyush Panthari and Prakash Ramani and in rebuttal, the workmen examined themselves. The Learned Labour Court recorded the findings that these workmen manhandled Piyush Panthari and Prakash Ramani and found the charges proved against them however, by relying on a judgment passed in case of *Nicholas Piramal India Ltd. V/s Hari Singh in Civil Appeal No.4436 of 2010* has ordered for reinstatement of employee with 50% back wages vide **impugned award dated 28.04.2023** hence, SET-A Writ Petitions before this Court.

**07.** The workmen have filed SET-B writ petitions challenging the findings recorded by the Labour Court whereby the charges were found proved and awarding only 50% of back wages. According to the workmen, no such incident has taken place, there is no medical evidence in support of the injuries sustained by these two witnesses, and no medical report was filed before the Court. So far as the FIR is concerned, nothing is on record about the final status of the trial, therefore, the Learned Labour Court has wrongly recorded the findings against the workmen, and they are entitled to be reinstated with full back wages.

***Submissions of the parties:***

**08.** So far as the challenge to the interlocutory order dated 16.02.2022 whereby the domestic enquiry has been declared illegal is concerned, it is not required to be looked into because the management

has proved the charges before the Labour Court. However, the management is only aggrieved by the relief of reinstatement with back wages when the charges have been found proved.

**09.** Shri Girish Patwardhan, learned senior counsel for the Employer argued that the Learned Labour Court has wrongly placed reliance on judgments passed in the case of *Nicholas Piramal India Ltd. (supra)* which was not a case of manhandling and assault by the workmen. In the said case, the charges were willful disobedience of lawful or reasonable order under clause 12(1)(d) of the SSO and willful slowing down the work performance by the workers. In such a situation the Apex Court has held that even if the charges are partially proved, the punishment of reinstatement with 50% back wages would be an appropriate punishment. But in the present case, workmen have not only committed serious misconduct but taken the law into their hands. In support of his contention, learned senior counsel has placed reliance on a judgment passed by the Apex Court in case of (i) *Madhya Pradesh Electricity Board V/s Jagdish Chandra Sharma in Civil Appeal Nos.1339 and 1340 of 2003*, (ii) *Kerala Solvent Extractions Ltd. V/s A. Unnikrishnan and Ors in SLP (C) Nos.13090 to 93 and 14108/93* and (iii) *Mahindra and Mahindra Ltd. V/s N.B. Naravade and Ors. [MANU/SC/0138/2005; (2005)ILLJ1129SC]*.

**10.** Shri Karpe Prakhar Mohan, learned counsel for the workmen urged that the management adopted the pick-and-choose method and named only these 7 employees in the FIR. There was some agitation going on with respect to the demand for pay revision but there was no serious assault on the executives or any destruction of the properties during the scuffle, they sustained minor injuries. Piyush Panthari and Prakash Ramani did not sustain grievous injuries and no medical documents have been filed to support their medical condition after so

so-called assault. These respondents / workmen have been out of employment for the last 7-8 years and most of them have crossed the age of superannuation. Thereafter at the most, the relief granted by the learned Labour Court be maintained.

***Appreciations & Conclusion:***

**11.** Admittedly, the incident had happened on 18.07.2015 and the matter was reported to the police, the police registered an FIR at crime No.437/34 under Section 323, 294, 506, 427/34 of IPC at police station Malharganj against the workmen. It is also not in dispute that two senior officers of the employer were assaulted by the workmen, after forcibly entering into the chamber of Piyush Panthari, Executive Assistant of Vice Charman. These respondents / workmen caught hold of them and dragged them upto the chamber of the Managing Director. The workmen are not disputing the report made to the police which is exhibited as Ex.D/10. The complaint made by these two Executives to the Management is exhibited as Ex.D/9 & Ex.D/11. After appreciating the documentary as well as oral evidence, the learned Labour Court came to the conclusion that these workmen assaulted and misbehaved with the Executives of the Employer and these findings are not liable to be interfered with under Article 226 of the Constitution of India. Shri Karpe, learned counsel tried to justify the Act of workmen by submitting that no grievous injury was caused by these executives and for which the punishment of termination was excessive, they have rightly been directed to be reinstated. It is further submitted by the learned counsel that they have been out of employment for the last 7 years, therefore, they are entitled to 100% backwages.

**12.** The aforesaid contention is not acceptable, the conduct of the workmen comes under the category of indiscipline which is a major misconduct, irrespective of the fact that the minor injuries were caused

by them. It is a matter of defamation, civil or criminal, of the reputation and dignity of those two executives of the employers who were attacked by these workmen. Section 44 of the IPC defines injury as “any harm whatever illegally caused to any person, in body, mind, reputation or property.” The said section demonstrates that the harm caused to the mind and reputation of a person, protected by the right to dignity, is also treated as injury in the eyes of the law, along with the harm caused to body and property. The Apex Court in the case of *Madhya Pradesh Electricity Board V/s Jagdish Chandra Sharma (supra)* has held that the employee has been found guilty of hitting and injuring a superior officer at the workplace obviously in the presence of other employees, this clearly amounted to a breach of discipline in the organization. When in such a situation the punishment of termination is awarded for hitting and injuring a superior officer it cannot be said not to be justified. Paragraphs No.8 & 9 are reproduced below:

8. The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorized absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution of India only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In *U.P. State Road Transport Corporation v. Subhash Chandra Sharma and Ors. MANU/SC/0188/2000 :(2000) ILLJ11175C*, this Court, after referring to the scope of interference with punishment under Section 11A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It

was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In ***Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Anr.*** MANU/SC/0743/2004 : (2004) III LLJ 772 SC, this Court after referring to the decision in *State of Rajasthan v. B.K. Meena* MANU/SC/0008/1997: (1997) ILLJ 746 SC, also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-a-vis the establishment, interference with punishment of dismissal could not be justified. In ***Bharat Forge Company Ltd. v. Uttam Manohar Nakate*** MANU/SC/0043/2005 (2005) ILLJ 738 SC, this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not do so on a compassionate ground. It is not necessary to multiply authorities not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on this question, since the matter has been dealt with in detail in a recent decision of this Court in ***Mahindra and Mahindra Ltd, v. N.B. Narawade*** MANU/SC/0138/2005: (2005) ILLJ 1129 SC. This Court summed up the position thus: "It is no doubt true that after introduction of Section 11A 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 concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11A 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 requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment."

It may also be noticed that in ***Orissa Cement Ltd. v. V. Adikanda Sahu*** 1960 (1) LLJ 518 SC and in ***New Shorrock Mills v. Maheshbhai T. Rao*** MANU/SC/0069/1997 : (1997) ILLJ 1212 SC, this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated "punishment of dismissal for using abusive language cannot be held to be

disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in *Employers, Management, Muriadih Colliery BCCL Ltd.v. Bihar Colliery Kamgar Union, Through Workmen MANU/SC/0131/2005: (2005)ILLJ1135SC* this Court after referring to and quoting the relevant passages from *Management of Krishnakali Tea Estate v. Akhil Bharatiya Chah Madzoor Sangh and Anr. MANU/SC/0743/2004 : (2004)IILLJ 772 SC and The Management of Tournamulla Estate v. Workmen MANU/SC/0300/1973: (1973)IILLJ241SC* held :-

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

9. In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the work place, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organization. Discipline at the work place in an organization like the employer herein, is the sine qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan, "**discipline** is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective Interests of **society** at large." Obviously, this idea is more relevant in considering the working of an organization like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organization as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion.

13. Similarly, in the case of *Mahindra and Mahindra Ltd. (supra)* the Apex Court has upheld the dismissal of the respondents / workmen who assaulted his co-worker with the galvanized pipe. So far as the judgment relied on by the learned Labour Court for awarding the

reinstatement with 50% backwages is concerned, the said case is related to the charge of lowering the production, not a case of manhandling and misbehaving with the superior officers.

**14.** Therefore, in such situations where the charges of assault and causing injury have been found proven, the direction for reinstatement is not being justified. These workers cannot be permitted to work with other workers, therefore, the award of reinstatement with 50% backwages would not be appropriate relief for the workmen. Then the question is what should be the proper relief for these workmen in given facts and circumstances. Apart from this unwanted incident, there is no other adverse material against these workmen and in the spur of the moment, they might have lost control of themselves as there was a lot of agitation going on due to non-fulfilment of the demand for wage revision. There was no previous enmity or serious confrontation between management and workers in this establishment. They did so for the benefit of their coworkers not for their personal gain. Admittedly the workmen have the right to peacefully and lawfully agitate against any perceived injustice done to them, at the same time, the agitation of the workmen cannot infringe upon the rights of the management. Therefore, in order to avoid further conflict and disturbance in the workplace, the relief of reinstatement would not be proper especially, when most of them have crossed the age of superannuation.

***Relief:***

**15.** Keeping in view the peculiar facts and circumstances of this case, I am of the opinion that the interest of justice would be sub-served if apart from payment of any terminal benefits which are liable to be paid due to their services rendered till the date of termination, a sum of **Rs.2,50,000/- (Two lakh fifty thousand)** towards compensation be also paid to each workmen / respondent in lieu of their reinstatement with

50% back wages. Hence the impugned award dated 28.04.2023 is modified accordingly.

**16.** In view of the above, **SET-A** Writ Petitions are **partly allowed** and **SET-B** Writ Petitions are **dismissed**.

**(VIVEK RUSIA)**  
**JUDGE**

Divyansh