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

Judgment Reserved on: **14th March, 2011**
% Judgment Pronounced on: **July 04, 2011**

\+ **LPA No. 647/2010**

BSES RAJDHANI POWER LTD. ..... Appellant
Through: Mr. Sandeep Prabhakar, Ms.Prerna Mehta & Mr.Amit Kumar,Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Anuj Agarwal, Mr.Jatin Rajput, Advocates for Respondent No.1. Ms.Ruchi Sindhwani and Ms.Megha Bharara, Advocates for Respondent No.3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1	Whether reporters of the local papers be allowed to see the judgment?	Yes
2	To be referred to the Reporter or not?	Yes
3	Whether the judgment should be reported in the Digest?	Yes

DIPAK MISRA, CJ

In this intra-court appeal, the assail is to the order dated 28.7.2010 passed by the learned Single Judge in WP(C) No.14237/2006 declining to interfere with the award dated 17.12.2005 passed by the Labour Court X, Karkardooma Courts in ID No.63/1998 whereby the reference was answered in favour of the respondent-workman on the foundation that the

order of termination which was passed on conviction for offences punishable under Section 323/149/148 of the Indian Penal Code (for short 'IPC') did not tantamount to conviction for offences involving moral turpitude and further the punishment imposed did not reflect proper exercise of discretion vested in an employer while dealing with an employee.

2. The facts which are essential to be enumerated are that the respondent-workman was in the employment of Delhi Vidyut Board as a Peon since 25.10.1978. On 4.5.1993, he was convicted in a criminal case for offences punishable under Sections 148/302/323 and 149 IPC and sentenced to undergo life imprisonment. The judgment of conviction and the order of sentence were assailed in a criminal appeal before the High Court of Punjab & Haryana wherein the High Court found him guilty of offences under Sections 323/149/148 of IPC but the charges levelled against him under Section 302 IPC were not found to have been proven. It is worth noting that during the pendency of the criminal appeal, he was released on bail and joined the services under Delhi Vidyut Board, till 17.4.1996 but was arrested again on 22.4.1996 to undergo remaining period of imprisonment. On 30.9.1996, his services were terminated on the

ground that he had been convicted for offences which involved moral turpitude.

3. Being dissatisfied with the order of termination, an industrial dispute was raised and eventually, it travelled to the Labour Court forming the subject matter of ID No.63/1998. The Labour Court, by the award dated 17.12.2005, directed his reinstatement with backwages and consequential benefits.

4. Grieved by the aforesaid award, the present appellant, BSES Rajdhani Yamuna Power Limited (one of the companies that came into existence after the bifurcation of the Delhi Vidyut Board), invoked the writ jurisdiction of the Court for quashment of the order of reinstatement with backwages and consequential benefits. It was contended before the learned Single Judge that the respondent-workman was not convicted for committing a petty offence but was involved in commission of a serious criminal offence which involved moral turpitude. It was also urged that the respondent-workman might have been acquitted under Section 302 IPC but was convicted under Section 323/149 IPC and sentenced to undergo six months' rigorous imprisonment and also for the same period

for the conviction under Section 148 IPC with the stipulation that both the sentences shall run concurrently and, hence, the punishment is quite grave involving moral turpitude. It was canvassed that if Rule 10(ii) of the DESU (DMC) Service (C&A) Regulations, 1976 is scanned in proper perspective, it would be quite clear that such a conviction constitutes moral turpitude as the same discloses depravity in his conduct and behaviour but the Labour Court has placed a narrow interpretation on the concept of moral turpitude and, therefore, the award passed by the Labour Court was absolutely vulnerable. On behalf of the appellant, decisions rendered in ***J.Jaishankar v. Government of India & Anr.***; 1996 SCC (L&S) 1372, ***Pawan Kumar v. State of Haryana & Anr.***; AIR 1996 SC 3300 and ***Karam Singh v. State of Punjab & Anr.***; 1996 SCC (L&S) 668 were pressed into service.

5. The aforesaid submissions were combated by the learned counsel for the workman contending, inter alia, that the findings recorded by the Labour Court are impeccable and do not warrant interference in exercise of extraordinary jurisdiction. It was put forth that by no stretch of imagination, the conviction in the case at hand can be construed as a conviction in respect of offences involving moral turpitude. In support of the said submissions, the learned counsel for the workman placed reliance

on the decisions in ***State of M.P. & Ors. v. Hazarilal***; 2008-II-LLJ-715 (SC), ***Glaxo Laboratories (I) Limited v. Labour Court, Meerut & Ors***.; 1984 (I) LLJ 16 (SC), ***Karam Singh*** (supra), ***State of West Bengal & Ors. v. Ram Nagina Dubey***; 199 (64) FLR 272 (Cal HC), ***Bhagwati Prasad Tiwari v. Regional Manager, Bank of Baroda, Branch Manager, Bank of Baroda & Ors***.; W.P.No.41636/98 (Allahabad High Court), ***Krishnankutty v. Senior Supt. Of Post Offices, Ernakulam & Ors***.; 1976 (I) LLJ 175 (Kerala High Court), ***On-Dot Couriers and Cargo Ltd. v. Anand Singh Rawat***; WP(C) No.4197/2008 (Delhi High Court) and ***Pawan Kumar*** (supra).

6. The learned Single Judge referred to the 1976 Regulations framed under Section 95 of the DMC Act, 1957 and also to few passages from ***Durga Singh v. State of Punjab,*** AIR 1957 Punjab 97 and ***Pawan Kumar*** (supra), and opined that the facts of the instant case would be nearer to the decision of the Apex Court in the case of ***Hazarilal*** (supra) wherein the employee was prosecuted under Section 323 read with Section 34 IPC and sentenced to undergo one month simple imprisonment which was reduced to a fine of Rs. 500/- in appeal. The learned Single Judge also referred to the concept of discretion and proportionality and, eventually, held that the

imposition of punishment was excessive and, hence, the award passed by the Labour Court did not warrant interference.

7. We have heard Mr.Sandeep Prabhakar, learned counsel for the appellant, Mr.Anuj Agarwal, learned counsel for the respondent No.1 and Ms.Megha Bharara, learned counsel on behalf of Ms.Ruchi Sindhwani, learned counsel for the respondent No.3. Despite service of notice, none has appeared on behalf of the respondent No.2, the workman.

8. The seminal issues that emerge for consideration in the present appeal are whether the conviction recorded against the second respondent can be regarded as a conviction involving moral turpitude and whether the punishment is disproportionate in the obtaining factual matrix. Be it noted, the judgment of conviction is one under Sections 323/149 and 148 of the IPC. The submission of the learned counsel for the appellant is that because of the acquittal of the offence punishable under Section 302 of IPC, it cannot be said that other punishment does not relate to moral turpitude.

9. In this context, we may refer with profit to the order dated 0.09.1996 which reads as follows:

"

ORDER

Whereas Shri Jai Prakash, E. NO. 25719, Peon under SE(C-III) had been convicted by the Sessions Court Sonipat under Section 148 IPC & Section 302 read with Section 148 IPC & Section 323 read with Section 149 IPC & sentenced him to undergo life imprisonment in criminal case registered against him under FIR No. Sl dated 22.02.1991 O.S.Rai Sonipat.

And whereas Shri Jai Prakash filed an appeal before the High Court of Punjab & Haryana, Chandigarh against the judgment passed by the Sessions Court and he was released on bail.

And Whereas the Hon'ble High Court of Punjab and Haryana now vide their order dated 18.03.1996 held him guilty Under Section 323/149 IPC and also Under Section 148 IPC reducing the life imprisonment to six months only and Shri Jai Prakash has undergone the imprisonment and has been released.

And whereas Shri Jai Prakash had begun to absent himself from duty w.e.f. 18.04.1996 onwards.

And whereas Shri Jai Prakash in the above manner has been convicted by two successive Courts including the Hon'ble High Court. His involvement in the Criminal activity has been clearly established through the Police investigation and also during the regular trial of his case in the court of law and as such there is no need to institute a regular departmental inquiry.

And whereas the U/s therefore dispenses with holding of any regular Department inquiry and other proceedings to be conducted under

> Regulations 10(ii) of the DESU(DMC) Service (C&A) Regulations, 1976 read with Section 95 of the DMC Act, 1957.
>
> And whereas in the totality of the circumstances and after perusal of relevant records and careful consideration of the case the U/s is of the opinion that the conduct and character of Shri Jai Prakash is such that he is not a liability to a public utility organization like DESU and therefore the U/s exercising the powers conferred on him in the DESU(Delhi Municipal Corporation) Service (Control & Appeal) Regulation, 1976 has no hesitation to impose the penalty of "dismissal from service" which shall ordinarily be a disqualification for future employment on Shri Jai Prakash, E.No.25719, Peon.
>
> The above orders are subject to recovery of dues recoverable from him on any account."

10. Clause 14 of the Regulations, 1976 deals with the disciplinary action for misconduct. Sub-clause 3 of the said clause enumerates what acts and omissions shall be treated as misconduct. In the case at hand, as we are only concerned with clause (q) of Clause 14 of the Regulations, 1976, the same is reproduced below:

> "(q) Any offence involving moral turpitude which punishable under the I.P.C."

11. First, we shall refer to the decision in ***Hazarilal*** (supra) as the learned Single Judge has based his conclusion on the bedrock of the ratio laid down therein. In ***Hazarilal*** (supra), the respondent, a peon in a middle school, had assaulted one Ram Singh. He was prosecuted for the commission of the said offence and was convicted by the trial Magistrate under Section 323 read with Section 34 of the IPC and sentenced to undergo one month's simple imprisonment. On an appeal being preferred by him, the sentence was reduced to a fine of Rs.500/- only. The revision preferred before the High Court was dismissed. It is worth noting that after conviction, the services were terminated and the appeal preferred by him also faced dismissal. Being grieved by the said action, the employee/ government servant preferred an application before the State Administrative Tribunal which allowed the application holding that the punishment of removal was grossly excessive. The State of Madhya Pradesh preferred a writ petition before the High Court which was dismissed. The Apex Court referred to Rule 19 of the MP Civil Service (Classification, Control and Appeal) Rules, 1996 and interpreted the said provision to convey that the disciplinary authority has been empowered to consider the circumstances of the case where any penalty is imposed on a

Government servant on the ground of misconduct which has led to his conviction on a criminal charge but the same would not mean that irrespective of the nature of the case in which he was involved or the punishment which had been imposed upon him, an order of dismissal must be passed. Their Lordships further opined that an authority which is conferred with the statutory discretionary power is bound to take into consideration all the attendant facts and circumstances of the case before imposing an order of punishment and at that juncture, it must act reasonably and fairly. Their Lordships referred to the doctrine of proportionality and eventually came to hold that the appeal was bereft of merit and, accordingly, dismissed the same. It is worth noting that Rule 19 of the MP Civil Service (Classification, Control and Appeal) Rules, 1996 only uses the words "conviction on a criminal charge" and the term "moral turpitude" is not a part of the Rule. That apart, the peon was convicted under Section 323 read with Section 34 IPC at his native place and, therefore, their Lordships invoked the doctrine of proportionality. It is submitted by the learned counsel for the appellant that the said decision is distinguishable as in the said case, the employee/government servant was convicted for inflicting a simple injury and was eventually sentenced

to pay a fine of Rs.500/- but in the case at hand, the respondent was convicted for offences punishable under Sections 302, 323, 148 and 149 IPC and on an appeal, the conviction under Section 302 IPC was set aside on technical grounds. The learned counsel for the respondent, per contra, submitted that once the order of acquittal has been recorded in respect of the offence under Section 302 IPC, the Court has to see the judgment of conviction in respect of the offences and should not go into the facts. In our considered opinion, the said decision is distinguishable regard being had to the language employed in the Rule and also keeping in view the nature of punishment.

12. In our considered opinion, what is required to be scrutinized is whether the conviction for offence involves moral turpitude or not. That is the fulcrum of the matter. If there is no moral turpitude in the commission of the offence, there is no misconduct. In case there is moral turpitude, the issue that would further emerge for consideration is whether the doctrine of proportionality qua punishment is to be invoked.

13. The learned counsel for both the sides have relied on the decision rendered in ***Pawan Kumar*** (supra). In the said case, their Lordships

expressed the view that moral turpitude is an expression which is used in legal as well as societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. After so stating, their Lordships referred to the policy decision of the State Government which has stated thus:

> "Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offence which are not included in it but which in certain situations and circumstances may involve moral turpitude."

After analyzing the same, their Lordships proceeded to state that the appellant therein was imposed with a fine of Rs.20/-. Be it noted, their Lordships called for the judgment but only a copy of the institution/summary register maintained by the Court of the Chief Judicial Magistrate, First Class was produced. Thereafter, their Lordships proceeded to state as follows:

> "…..Mere payment of fine of Rs.20/- does not go to show that the conviction was validly and legally

recorded. Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests laid down in the policy decision of the Government. We are rather unhappy to note that all the three Courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction under Section 294, I.P.C. *per se* established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294, I.P.C. on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels.

"14. Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary Courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are, therefore, necessary in raising the toleration limits with regard petty offences especially when tried summarily. Provision

> need be made that punishment of fine up to a certain limit, say up to Rs.2,000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into the retention in Government service. This can brook no delay, whatsoever."

Regard being had to the factual matrix in the case of ***Pawan Kumar*** (supra), we have no trace of doubt that the said decision is distinguishable and, in fact, the learned Single Judge has also not placed reliance on the same.

14. Presently, we shall proceed to deal with the concept of moral turpitude and how it has been understood and interpreted. In Black's Law Dictionary, (8th Edn., 2004), the term "moral turpitude" has been defined thus:

> "Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude - such as fraud or breach of trust… Also termed *moral depravity*….
>
> 'Moral turpitude means, in general, shameful wickedness - so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general,

> contrary to the accepted and customary rule of right and duty between people.' "

15. In this context, we may refer to the Corpus Juris Secundum, wherein 'moral turpitude' has been described as follows:

> "While frequently general statements have been made to the effect that mere assault does not or may not, involve moral turpitude, or that assault and battery rarely involve moral turpitude, the rule would seem to be that assault and battery may involve moral turpitude and it may not, the difference depending on the circumstances, and whether an assault does or does not involve moral turpitude generally will be determined by the particular facts of each individual case. The statutes of various jurisdictions divide assaults into different degrees, and many of the crimes which are included within such definition are crimes that involve moral turpitude. Homicide may or may not involve moral turpitude depending on the degree of the crime."

16. In ***Ram Nagina*** (supra), the respondent was convicted under Sections 147 and 325/149 of the IPC and on an appeal being preferred, the learned Sessions Judge converted the same to one under Sections 147/323 of the IPC. The question that arose before the Calcutta High Court was whether such a conviction would imply moral turpitude. The learned Single Judge had opined that the conviction in respect of the offences under Sections 149 and 323 of the IPC do not involve moral turpitude and,

accordingly, set aside the punishment. On an appeal being preferred, the Division Bench took note of the fact that the employee, being a constable, was a member of the disciplined force and his involvement in the crime did tantamount to moral turpitude and resultantly set aside the decision of the learned Single Judge.

17. In this regard, we may refer with profit to the decision in ***In re 'P' An Advocate***; AIR 1963 SC 1313 wherein the Constitution Bench, while dealing with the facet of moral turpitude in the context of delinquency by an 'Advocate-on-record', held thus:

> "It is true that mere negligence or error of judgment on the part of the Advocate would not amount to professional misconduct. Error of judgment cannot be completely eliminated in all human affairs and mere negligence may not necessarily show that the Advocate who was guilty of it can be charged with misconduct, vide In re A Vakil, ILR 49 Mad 523: (AIR 1926 Mad 568) and in the matter of an Advocate of Agra, ILR (1940) All 386: (AIR 1940 All 289 (SB)). But different considerations arise where the negligence of the Advocate is gross. It may be that before condemning an Advocate for misconduct, courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. In dealing with this aspect of the matter, however, it is of utmost importance to remember that the

> expression "moral turpitude or delinquency" is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A willful and callous disregard for the interests of the client may, in a proper case, be characterised as conduct unbefitting an Advocate. In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude. The Advocate-on-record like the other members of the Bar are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the honesty of the Bar. That is why dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the Bar, the expression "moral turpitude or delinquency" is not to be construed in an unduly narrow and restricted sense."

18. In ***J.Jaishanker*** (supra), the appellant was convicted for an offence under Section 509 IPC and sentenced to pay a fine of Rs.100/-. The employee sought a reference under Section 10 of the Industrial Disputes Act, 1947 for adjudication of his dismissal from service. The Central

Government declined to refer the dispute. Being dissatisfied, a writ petition was filed before the learned Single Judge. The learned Single Judge allowed the petition. In appeal, the Division Bench modified the order and on the basis of a concession given by the respondent, the order of dismissal was converted into discharge from service without retiral benefits. However, the Division Bench directed to pay him gratuity, as payable, in accordance with law. In appeal, reliance was placed on the decision in ***Pawan Kumar*** (supra). Their Lordships have held thus:

> "In view of the admitted position that the conviction of the petitioner for an offence under Section 509 IPC had attained finality, it undoubtedly involves moral turpitude as it is impermissible for such an employee to continue in service. When a government servant is dismissed from service on conviction by a criminal court involving moral turpitude, it automatically leads to removal from service, without further enquiry. Can a worker be put on a higher pedestal than as a government servant? The obvious answer is 'No'. In view of the conviction for moral turpitude of the petitioner and due to conviction for an offence under Section 509 IPC, the order of dismissal was rightly passed. The recommendation made by this Court was made after noticing the trivial offences like traffic offences, municipal offences and other petty offences under the IPC which do not involve moral turpitude. This Court recommended to Parliament to step in and make

> necessary alteration in law so that consequence of the conviction and sentence would suitably be modulated and mitigated in the light of the judgment. That ratio is clearly inapplicable to the facts of this case. As a fact, on the basis of concession made by the learned counsel for the respondents, the Division Bench of the High Court modified the order of dismissal to one of discharge from service without consequential retiral benefits but with payment of gratuity in accordance with law. The learned Single Judge was obviously in error in directing reference to the Industrial Tribunal. We do not, therefore, find any illegality warranting interference."
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> [Emphasis Supplied]

19. In ***Durga Singh v. The State of Punjab,*** **AIR 1957 Punjab 97**, it has been opined thus:

> "The term "moral turpitude" is a rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow-man or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not. Even if the words "involving moral turpitude" are held to be implied in "conviction on a criminal charge" in Proviso to Art. 311(2) it appears to me clear that if a member of the Police Force is guilty of having been found drunk at a public place or to have become habituated to

> liquor and if he is convicted by a criminal Court, then his conviction should be held as involving moral turpitude. It appears to me rather incongruous that persons who are habituated to liquor and are found drunk in public places should be allowed to remain in Police Force to bring such persons to book. I have, therefore, no hesitation in rejecting this contention on behalf of the petitioner. I accordingly hold that the petitioner in the present case was not entitled to protection under Art.311(2) of the Constitution."

20. In ***Allahabad Bank & Anr. v. Deepak Kumar Bhola*, (1997) 4 SCC 1**, the respondent was visited with an order of suspension which was challenged on the ground that solely because there was an allegation that he had entered into a criminal conspiracy, it could not be regarded that an offence involving moral turpitude had been committed by him and, therefore, the Bank had no jurisdiction to pass the order of suspension. The High Court quashed the order of suspension and directed full payment of salary and allowances to the respondent. In that case, their Lordships posed a question as to what is an offence involving moral turpitude in the context of handling of accounts of the bank and expressed the view as follows:

> "8. What is an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may

be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw.

9. This Court in Pawan Kumar v. State of Haryana (1996) 4 SCC 17: 1996 SCC (Cri) 583 (SCC at p.21) dealt with the question as to what is the meaning of expression "moral turpitude" and it was observed as follows:

> " 'Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

This expression has been more elaborately explained in *Baleshwar Singh v. District Magistrate and Collector* where it was observed as follows:

> "The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or goods morals. It implies depravity and wickedness of character of disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity.

> It will be contrary to accepted customary rule and duty between man and man."

21. In ***State of Punjab & Ors. v. Ram Singh*, AIR 1992 SC 2188**, a three-Judge Bench was dealing with the dismissal of an employee on the ground that he had misconducted himself as per Rule 16.2(1) of the Punjab Police Manual, 1934 inasmuch as he was heavily drunk and had become uncontrollable. Their Lordships referred to the clause which provided that dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service, and in making such an award, regard shall be had to the length of service of the offender and his claim to pension. In that context, their Lordships referred to the meaning given to the term "misconduct" in Black's Law Dictionary and in P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 and eventually expressed the view as follows:

> "Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful bahaviour, wilful in character; forbidden act, a transgression of established and

> definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

22. We have referred to the said decision as it highlights that a misconduct may involve moral turpitude and the whole ambit has to be construed with reference to the subject matter. Be it noted, the factum of disciplinary service and the requirement of maintaining strict discipline have been taken into consideration in the said case.

23. In ***Mahak Singh v. State of UP & Ors.*, AIR 1999 Allahabad 274**, the Bench referred to the decision in ***Harsukh Lal v. Sarnam Singh*, 1964 ALL LJ 1118** wherein the observations of Hon'ble V.Broome, J. were reproduced They read as follows:

> " 'Turpitude' is a word of high emotional significance, suggesting conduct of such depravity as to excite feelings of disgust and contempt. The crime of simple hurt does not normally provoke any such reaction and consequently cannot be classed as an offence involving

> moral turpitude and it seems to me that there is no logical reason why the offence of murder, which in essence is only and aggravated form of hurt, should be held necessarily to involve moral turpitude. I am willing to concede that murders which are premeditated and planned in cold blood, those which the perpetrated for some base motive and those which are carried out with extreme ferocity and cruelty do involve moral turpitude, as they naturally evoke a spontaneous feeling of repulsion and condemnation in the mind. But a murder committed in the head of a fight or in response to serious provocation could hardly be placed in the same category."

24. In the said case, as the petitioner has committed murder of his step mother, the Bench expressed the view that the conviction was an act of moral turpitude.

25. Regard being had to the basic concept of moral turpitude, we are obliged to analyse whether the conviction in the case at hand can be regarded to fall in the compartment of an offence involving moral turpitude. It is worth noting that the appellant along with others was tried for offences punishable under Sections 322, 133, 134, 149 and 148 of IPC and sentenced to undergo rigorous imprisonment as has been indicated earlier. In appeal, the Division Bench came to hold that the co-accused did not share the common intention with the main accused Kalu for inflicting

the injury that had caused death of the deceased and, hence, they were liable to be punished for the individual acts. The Division Bench has found that the injuries caused by others including the respondent No.2 were caused by blunt weapon and, hence, they are to be convicted under Section 123/149 IPC. The Bench has also found that the offence against them under Section 148 IPC is fully established. It is worth noting that regard being had to the gap of time when the death occurred, the Division Bench converted the offence from Section 302 to Section 304 Part I of IPC. We have referred to the said facts only to highlight that the appellant was found to have committed an offence under Section 148 IPC also. Section 148 of the IPC reads as follows:-

> "**148. Rioting, armed with deadly weapon**.— Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with find, or with both."

26. It is worth noting that "rioting" is an offence under Section 147 of the IPC. Section 148 is an accentuated form of rioting inasmuch as it stipulates that the rioting has to be done being armed with a deadly weapon or with anything which used as a weapon of offence is likely to

cause death. The punishment is severe than what has been provided under Section 147 of the IPC. The basic ingredients of an offence under Section 148 are that there was an unlawful assembly, that there was use of force or violence by the members of such an assembly, that the accused was a member of such an assembly and that the accused, in prosecution of the common object of such assembly, used force. The term 'offence of rioting' finds place in Section 146 of the IPC. It stipulates that whenever force or violence is used by an unlawful assembly or any member thereof in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. The term 'deadly weapon' has its own signification. As has been indicated in many an authority which we have referred to herein before, the offence involving moral turpitude has to adjudged regard being had to the moral and societal paradigms.

27. The punishment under Section 323 of the IPC has a different contour but when a person is convicted under Section 148 of the Act, it establishes, in a way, the nature, attitude, proclivity and propensity of the person concerned. The petitioner was working as a peon in the Delhi Vidyut Board. He got himself involved in a criminal case of this nature and

eventually, the conviction has been recorded under Sections 323/149 and 148 of the IPC. Regard being had to the conviction in respect of the nature of an offence, as engrafted under Section 148 of the IPC, we are disposed to think that it involves an offence involving moral turpitude and the petitioner has been convicted to undergo rigorous imprisonment for six months for the said offence. Both facts have their own signification

28. As is evident from the order passed by the learned Single Judge, he has also referred to the doctrine of proportionality to give the stamp of approval to the award passed by the Labour Court. In this context, we think it appropriate to discuss under what circumstances the doctrine of proportionality should be invoked or deserves to be invoked.

29. In ***Bharat Forge Co. Ltd. v. Utam Manohar Nakate***; (2005) 2 SCC 489, it has been ruled thus.

> "30. Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four-corner thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.

> 31. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.
>
> 32. In *Regional Manager, Rajasthan SRTC v. Sohan Lal;* (2004) 8 SCC 218, it has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary."

30. The said principles were reiterated in ***Hombey Gowda Educational Trust & Another v. State of Karnataka & Others***; (2006) 1 SCC 430.

31. In this context, we may refer fruitfully to the decision in ***V. Ramana Vs. A.P.S.R.T.C. and Ors.;*** (2005) 7 SCC 338 wherein it has been held thus:

> "The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case the Court would not go into the correctness of the choice made by the

> administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.
>
> 11. To put it differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

32. In ***State of Rajasthan & Another v. Mohammad Ayub Naz***; (2006) 1 SCC 589, their Lordships have expressed thus:

> "10. This Court in Om Kumar and Ors. v. Union of India**;** (2001) 2 SCC 386 while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded was shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and,

> therefore, in our view, the interference by the High Court on reduction of punishment of removal was not called for. "

33. In ***Chairman cum Managing Director, Coal India Limited and Anr. Vs. Mukul Kumar Choudhuri and Ors.;*** (2009) 15 SCC 620, while dealing with the doctrine of proportionality, the Apex Court, after referring to the decision in ***Coimbatore District Central Coop. Bank v. Employees Assn***.; (2007) 4 SCC 669, has ruled thus:

> "19. The doctrine of proportionality is, thus, well-recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.
>
> 20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."

34. In ***State of U.P. v. Sheo Shanker Lal Srivastava and Others***; (2006) 3 SCC 276, it has been held that the High Court should be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

35. In the case at hand, when the offence committed by the respondent is in the realm or sphere of moral turpitude and there is imposition of sentence of rigorous imprisonment for a period of six months on two counts (although with a stipulation that the sentences would run concurrently), the punishment of termination cannot be said to be shocking to the judicial conscience. We are disposed to think that the punishment is not excessive or shockingly disproportionate. An employee, who has been involved in an offence of moral turpitude, has no right to continue in service. A lesser punishment would be contrary to the norms. It is difficult to hold that such a punishment shocks the judicial conscience or is totally unreasonable.

36. In view of our aforesaid premised reasons, we are unable to concur with the view expressed by the learned Single Judge by which the learned Single Judge has concurred with the award passed by the Labour Court

and resultantly, the appeal is allowed and the order passed in the writ petition as well as the award passed by the Labour Court are set aside. There shall be no order as to costs.

CHIEF JUSTICE

JULY 04, 2011 **SANJIV KHANNA, J.**

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