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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******LETTERS PATENT APPEAL No.216 OF 2009******IN******WRIT PETITION No.2115 OF 1999******Mr. Inderchand Tarachand Jain******....Appellant******Vs.******Tata Engineering Locomotive
Company Ltd.******....Respondent**************

None for the Appellant

Mr. K.S. Bapat a/w. Mr. A.K. Gopalan a/w. Mr. Aniket Mokashi i/b.
Haresh Mehta and Co. for the Respondent**************CORAM : V. M. KANADE &
SMT. SWAPNA S. JOSHI, JJ******DATE : SEPTEMBER 16, 2016*****P.C. :**

1. None appears on behalf of the Appellant. Heard Shri Bapat, learned counsel appearing on behalf of the Respondent.
2. The Appellant has challenged the order passed by the Learned Single Judge dated 21.8.2007. By the said order, the Learned Single Judge was pleased to set aside the award passed by the Labour Court.
3. Brief facts, which are relevant for the purpose of deciding the appeal, are as under:

4. The Appellant was employed in Respondent – Company as miller w.e.f. 25th September, 1978. During the course of his employment, Appellant took number of leave. He was, therefore, suspended for one day. However, he has not improved his performance and continued to remain absent for 56 days on 24 occasions. A charge sheet was issued to the Appellant on 26.10.1987 alleging that he has committed misconduct by remaining absent on number of days. The Appellant was dismissed from the services on 26.1.1988 after taking into consideration the finding of the Enquiry officer. Therefore, the Conciliation Officer issued a Failure Report and the Reference (IDA) No. 176 of 1991 came for adjudication before the Labour Court at Pune. The Labour Court was pleased to adjudicate the Reference and pass an Award Part II dated 28.8.1998. It was held that the enquiry conducted against the second party was legal, fair and in proper manner. It was further held that the finding of the inquiry is not perverse and the misconduct is proved. The Labour Court came to the conclusion that the punishment of dismissal was disproportionate to the misconduct which was committed by the Appellant and therefore, directed the Respondent to reinstate the Appellant without back wages.

5. Being aggrieved by the said order, the Respondent preferred a writ petition before this Court which was allowed by the Learned Single

Judge by a detailed order dated 21st August, 2007.

6. We have, with the assistance of Shri Bapat, learned counsel for the Respondent, gone through the impugned judgment and order of the Learned Single Judge. The Learned Single Judge, after taking into consideration various judgments of this Court and also of other High Courts, has observed that the Labour Court has erred in giving a direction that the Appellant should be reinstated.

7. The Learned Single Judge, in our view, after going through the record, has correctly held that the explanation given by the Appellant for his absence was not adequate and the stand taken by the Appellant was not proper.

8. In our view, it will not be possible to interfere with the well reasoned order passed by the Learned Single Judge. Hence, LPA is dismissed.

SWAPNA S. JOSHI, J.

V.M. KANADE, J.