

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL ST. NO.20317 OF 2011

D.S. Kashid (Dead), By Lrs:

Rahul Dattatraya Kashid

.. Appellant

Vs

Tata Motors Ltd.

.. Respondent

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Shri V.H. Shekdar for the Appellant.

Shri K.S. Bapat along with Shri A.K. Gopalan i/b Shri Haresh Mehta & Co for the Respondent.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ
DATED : 1ST DECEMBER 2016

P.C.

1. Heard learned counsel appearing for the Appellant who was the Petitioner in the Writ Petition filed before the learned Single Judge. The Appellant was an employee of the Respondent Company. A chargesheet was issued to him on 25th May 1989 alleging that he had incited other workmen to participate in the illegal strike. Another allegation was that he had allegedly assaulted one Shri Shinde in the factory premises on 15th March 1989. Further allegation is that he had compelled the workmen travelling in the company's bus to alight from the buses when they arrived at the factory gate. The allegation against him was that he informed the workmen that he was representing a Union which had directed the workmen to proceed on strike. The allegation is that he threatened the workmen with dire consequences if

they did not comply with the call made by the Union. The allegation is that he assaulted the said Shri Shinde at 8.15 a.m. on 15th March 1989 which resulted in fracture of his nasal bone and multiple contusions on his face and abdomen.

2. The Appellant by filing a reply denied the charges levelled against him in the chargesheet and contended that the charges have been fabricated. It appears that during the course of the inquiry held by the Inquiry Officer, a stand was taken by the Appellant that on the date of the incident, he was not present and in fact he was at Mangalvedha. Apart from examining himself, he examined his brother in support of the aforesaid plea. The Inquiry Officer came to the conclusion that the Appellant was guilty of charges under Clauses (k), (b) and (l) of the Standing Order 24. By accepting the report of the Inquiry Officer, the Respondent passed the order of dismissal of the Appellant from the service.

3. Being aggrieved by the action of the Respondent dismissing the Appellant from the employment, an industrial dispute was raised by him. Part -I award was made by the Labour Court holding that the inquiry conducted against the Appellant was fair and proper. The Labour Court held that the findings of the Inquiry Officer were not perverse and that there was a justification for imposing harsh

punishment of dismissal from the service. The findings of the Labour Court were subjected to a challenge by the Appellant by way of filing a Writ Petition which has been rejected by the learned Single Judge by the impugned judgment and order dated 15th September 2010.

4. The learned counsel appearing for the Appellant submitted that the version of the Appellant that he was at Mangalvedha on the date of the incident could not have been disbelieved only on the ground that this contention was not raised by the Appellant by way of reply to the chargesheet. He urged that the contention was raised specifically during the course of the inquiry. His second submission is that there is absolutely no evidence to show that any assault was made by the Appellant on Shri Shinde as alleged by the Respondent. Thirdly, he submitted that the allegation of assault on Shri Shinde is not at all genuine because there was no police complaint filed by Shri Shinde. The findings on this aspect by the Inquiry Officer and the Labour Court are perverse and, therefore, the learned Single Judge ought to have exercised writ jurisdiction and interfered.

5. We have carefully considered the submissions. It is not in dispute that by way of reply to the chargesheet, the Appellant did not raise a contention that on the date of the alleged incidents mentioned in the chargesheet, he was not present at the spot of the incident and he

was at Mangalvedha. The learned Single Judge has observed that as this contention was not admittedly raised at the first instance while replying to the chargesheet, the same was found to be an afterthought and, therefore, was rightly rejected by the Inquiry Officer as well as the Labour Court. Secondly, the learned Single Judge observed that apart from leading evidence of his own brother on this aspect, no other material was produced by the Appellant even to show that on that date, he was on leave. This is the second reason given by the Inquiry Officer as well as by the Labour Court for disbelieving the case of the Appellant as regards his absence on the date of the incident.

6. It is true that the First Information Report was not registered on the basis of the incident of assault on Shri Shinde. What is material here is that a case made out for the first time by the Appellant during the course of disciplinary inquiry of his absence at the time of the incident. For good reasons, the said case has been discarded by the Inquiry Officer as well as by the Labour Court. The learned Single Judge for the reasons recorded in the impugned order has concurred with the Labour Court.

7. As far as the standard of proof before the Disciplinary Inquiry is concerned, the law is very well settled. The Inquiry Officer can draw appropriate inference on the basis of the preponderance of

probability. Once the Appellant failed to establish that he was at Mangalvedha at the time of the incident, in our view, there was nothing wrong with the conclusions drawn by the Inquiry Officer as well as by Labour Court. The learned Single Judge has dealt with each and every submission made across the bar by the learned counsel appearing for the Appellant and has recorded the findings on the said submissions.

8. We concur with the view expressed by the learned Single Judge that there is no perversity with the findings recorded by the Inquiry Officer as well as by the Labour Court. Accordingly, we find that there is no merit in the Appeal and the same is dismissed.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)