

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO.241 OF 2006
IN
WRIT PETITION NO.7589 OF 2000**

Chandrakant Krishnaji Shewate
Indian Inhabitant of Ajmera Housing
Society, MC-1-304, Pimpri,
Pune 411 018.

.... Appellant

versus

Tata Motors Limited
Formerly known as M/s. Tata
Engineering and Locomotive Co. Ltd.
A company incorporated under the
Companies Act, 1956, having its
Factory at Pimpri, Pune 411 018.

... Respondent

**WITH
LETTERS PATENT APPEAL NO.31 OF 2006
IN
WRIT PETITION NO.7589 OF 2000**

Tata Motors Limited
Formerly known as M/s. Tata
Engineering and Locomotive Co. Ltd.
A company incorporated under the
Companies Act, 1956, having its
Factory at Pimpri, Pune 411 018.

... Appellant

versus

Chandrakant Krishnaji Shewate
Indian Inhabitant of Ajmera Housing
Society, MC-1-304, Pimpri,
Pune 411 018.

.... Respondent

.....

- Mr.V.H. Shekdar, Advocate for the Appellant in LPA No.241/06 and for Respondent in LPA No.31/06.
- Mr.K.S. Bapat a/w Mr.Rushil Mathur i/b. Mulla & Mulla & CBC, Advocate for the Appellant in LPA No.31/06 and for Respondent in LPA No.241/06.

CORAM : **SMT. VASANTI A. NAIK & SARANG V. KOTWAL, JJ.**
DATE : **13th DECEMBER, 2017**

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. Since both these Letters Patent Appeals challenge the same judgment dated 23/12/2005 passed by a learned Single Judge of this Court in Writ Petition No.7589 of 2000, both these Letters Patent Appeals are decided by this common judgment. By the said impugned judgment the learned Single Judge of this Court had set aside the award part II passed by the Labour Court at Pune, dated 04/01/2000. For the sake of brevity, the appellant in LPA No.241/06 is referred by his name Shewate and the respondent in LPA No.241/06 is referred as TELCO. LPA No.31/06 is filed by TELCO against Shewate. The Labour Court, Pune had dismissed the Reference made by the Deputy Commissioner

of Labour, Pune u/s 10(1)(c) r/w 12(5) of the Industrial Disputes Act, 1947. The Labour Court had passed the said Award part II in Reference (ID) No.28 of 1991. Thereby Shewate's dismissal was confirmed. While allowing the Writ Petition, the learned Single Judge did not pass the order of reinstatement with continuity of service and back-wages to Shewate and granted only compensation in the form of 40 months wages calculated at his last drawn wages and also granted gratuity and Provident Fund accordingly. Both parties were aggrieved by the said order to the extent to which it affected them. Hence the parties have filed the present appeals.

2. The brief facts necessary for the decision of these appeals are as follows;

Shewate was a member of TELCO Kamgar Sanghathana (TKS), which was one of the trade unions functioning in TELCO. The other union i.e. TELCO Employees' Union (TEU) was formed on 19/02/1989. TELCO entered into

an agreement with TEU in respect of certain pending demands. The presence of rival unions led to acrimony between the members of the unions. On 14/03/1989 there was a quarrel between two workmen belonging to the rival unions and heated exchange of words between them ensued, culminating in their suspension from service pending enquiry.

3. On 15/03/1989 the incident which was the subject matter of the enquiry initiated against Shewate took place. It is the case of TELCO that on 15/03/1989 Shewate along with other workmen prevented others from entering factory premises at Pimpri. Shewate and others assaulted one Gulab Shankar Nevale and Prakash Mahadeo Warade at 08.15 a.m. thereby preventing them from attending work. Gulab Nevale and Prakash Warade went to Pimpri Police Station, and thereafter they were treated in Sasoon Hospital.

4. Aforesaid Warade made complaint to TELCO on 21/03/1989. TELCO issued chargesheet to Shewate on

16/05/1989 for violation of certain clauses of the model standing orders including:

- (1) Disorderly and riotous behaviour on the premises of the factory;
- (2) Instigating and abetting an illegal strike;
- (3) Commission of an act contrary to discipline and rude behaviour.

5. Before the Inquiry Officer, TELCO examined in all 8 witnesses including their Security Officer, Human Resources Officer, Photographer, Security Inspector, Doctor and some workmen. Shewate examined himself and some other witnesses in support of his case. The Inquiry Officer gave his report on 01/01/1991, holding that the charges levelled against Shewate were fully established. TELCO thereafter made approval application before the Industrial Court u/s 33(2)(b) of the Industrial Disputes Act, 1947, praying for approval for dismissal of Shewate w.e.f. 30/04/1991 and accordingly TELCO subsequently dismissed Shewate from services.

6. After failure of the Conciliation Proceedings, Shewate submitted his statement of claim in Reference (ID) No.28/91 before the Labour Court, Pune. In the said proceedings Shewate raised demand for reinstatement with continuity of service and full back-wages. After the pleadings were completed, the Labour Court came to the conclusion that the enquiry held against the petitioner was fair and illegal. The Award Part I was delivered on 09/05/1995. The Labour Court then considered the correctness of the findings of the Inquiry Officer and also considered the question as to whether punishment of dismissal was shockingly disproportionate and by passing the final Judgment and Award Part II, the Labour Court recorded the findings in favour of TELCO. It was held that, the findings of the Inquiry Officer were not perverse and the punishment of dismissal was not shockingly disproportionate and harsh.

7. Shewate challenged the said Award by filing Writ Petition No.7589/00 under Article 226 of the Constitution of India before this Court. The learned Single Judge vide her

Judgment and order dated 23/01/2005 was pleased to pass the order as mentioned earlier, which is challenged by both the parties separately by way of the present appeals mentioned as earlier.

8. We have heard the learned counsel Mr.V.H. Shekdar for Shewte and the learned counsel Mr.K.S. Bapat for TELCO. With their assistance we have perused the impugned judgment and order as well as all the relevant documents which were produced along with both these appeals.

9. The learned counsel Mr.Shekdar for Shewate submitted that the learned Single Judge has rightly set aside the Award passed by the Labour Court by giving sufficient reasons and the material on record was properly considered in arriving at the finding recorded in favour of Shewate in the Writ Petition. He submitted that however, the learned Single Judge should have passed the order directing reinstatement with continuity of services with back-wages. He submitted that the entire material

produced before the Inquiry Officer shows that Shewate was not present when the incident on 14/03/1989 had taken place and therefore the findings recorded by the Inquiry Officer, which were accepted by the Labour Court, were perverse and therefore the learned Single Judge has rightly interfered with the said findings.

10. As against these submissions advanced on behalf of Shewate, Mr.Kiran Bapat learned counsel for TELCO submitted that the conclusions arrived at, by the Labour Court as well as the Inquiry Officer were based on proper consideration of the material before them. He submitted that the learned Single Judge should not have interfered with the findings on fact, which were based on the cogent material before the Labour Court as well as the Inquiry Officer. Mr.Bapat submitted that the learned Single Judge should not have set aside the Award which was based on the findings of facts, particularly when the view taken by the Labour Court was a possible view and the reasoning given by the Labour Court was not perverse.

11. We have gone through the impugned Judgment and Order passed by the learned Single Judge. The learned Single Judge considered the rival submissions and made certain observations on the factual aspects. The learned Single Judge accepted the fact that the victim of the incident Mr.Nevale might not be knowing the name of Shewate, when he had given the complaint to TELCO in respect of the incident dated 14/03/1989 and he had identified Shewate after two months from the incident. The learned Single Judge has observed that since TELCO had number of factories employing more than 10,000 workers, it was not expected that every person would know names of his co-employees. After making such observations, the learned Single Judge then proceeded to consider the question of Shewate's presence at the scene of occurrence at the time when the incident had taken place. In fact, from the impugned order it appears that the learned Single Judge has based his reasoning mainly on this aspect of the matter. The learned Single Judge has observed that, Shewate

was on the night shift on 14/03/1989 which ended at 06.30 a.m. on 15/03/1989. The learned Single Judge has further observed that after 06.30 a.m. Shewate could have been present at the factory premises for another 15-20 minutes only and therefore it was not possible that Shewate would have been present at the scene at 08.15 a.m. on 15/03/1989.

12. The learned Single Judge has observed that the Labour Court's conclusion that the petitioner was present at about 08.00 a.m. at the scene of offence was not acceptable. The learned Single Judge has further observed that TELCO had examined Nevale and Warade, who were the members of rival unions of Shewate's union. The other witnesses were employed with TELCO and therefore no independent witnesses were examined. It was observed that, Shewate was implicated because of trade unions rivalry. The learned Single Judge has accepted that Shewate's evidence that he returned home at 07.45 a.m. was believable. The learned Single Judge also referred to the observations of the Inquiry Officer that there was a strong

possibility that Nevale had wrongly mentioned name of Shelke instead of Shewate in his complaint. Thus, according to the learned Single Judge, the Inquiry Officer's findings on the issue were perverse. The Labour Court was in error in holding that Shewate was guilty of committing misconduct of assault on Nevale and Warade. The learned Single Judge also took into consideration the fact that Shewate's name was not mentioned in the complaint lodged with police by Nevale and Warade, immediately after the assault and Nevale had implicated Shewate almost two months after the incident.

13. After taking into consideration the Inquiry Officer's report, the reasonings given by the Labour Court in passing the Award and after perusing the impugned judgment and order passed by the learned Single Judge of this Court, we are unable to agree with the view taken by the learned Single Judge in the impugned order labelling findings of the Inquiry Officer as perverse and observing that the Labour Court had committed an error in accepting such report. As mentioned earlier, the learned

Single Judge had appreciated the facts which were brought on record during the enquiry held by the Inquiry Officer and had observed that Shewate could not have been present at the scene of offence when the incident had taken place. We find that the view taken by the learned Single Judge that Shewate could have been present at the factory premises at the most for 15-20 minutes after the end of his shift at 06.30 a.m., is unreasonable and is without any basis.

14. Shewate's statement during the enquiry itself shows that he had admitted that, on 15/03/1989 at 07.00 a.m. he came to the gate of the company for going home. Thereafter he had gone to meet one Jaysingh Pawar, who was the Leader of his union and who was accompanied by some workmen. Thereafter he had a talk with him and discussed the circumstances prevailing outside. Thereafter Jaisingh Pawar had told him that a meeting was scheduled at the gate and thereafter Shewate had gone home. According to Shewate he reached home at 07.40 a.m. and then he attended his company on

16/03/1989. This statement clearly shows that the observation made by the learned Single Judge that Shewate could not have been present at the factory after more than 15-20 minutes after 06.30 is not correct. According to his own statement, he met his leader at 07.00 a.m. and then had a discussion which also must have consumed some time. He claims to have reached home at 07.45 a.m. The time mentioned is closer to the time of the alleged incident, which had taken place at around 08.00 a.m. Therefore in our opinion the view taken by the Inquiry Officer which was accepted by the Labour Court, Pune was a possible view and there was nothing perverse about such conclusion.

15. The another aspect referred to by the learned Single Judge regarding not mentioning of Shewate's name in the complaint given by the victim to the police as well as to TELCO initially, does not have much significance. In fact the learned Single Judge himself has observed that not every employee was expected to know names of his fellow employees in such a large establishment. Therefore when the occasion arose to identify

Shewate, which was after two months, the victim identified him. We do not find any irregularity or illegality in this identification going to the root of the matter and on the basis of this circumstance it was not possible to hold that Shewate had not assaulted the victims. Thus, on this count also we find that the view taken by the Inquiry Officer and the Labour Court was a possible view and there was nothing perverse about such view and even on this count also, the learned Single Judge should not have interfered with the finding of fact recorded by the Inquiry Officer and the Labour Court.

16. It is also important to note that Shewate had not challenged the fairness of the enquiry. The Labour Court in paragraph No.8 of the Award has observed that as per the pursis filed on behalf of Shewte at Ex.17 of the proceedings before the Labour Court, Shewate has conceded the issue regarding the procedural fairness of the enquiry.

17. It is well settled that, when the workman does not

challenge the correctness, legality or validity of the enquiry conducted, it is not open for the Labour Court to go into the findings recorded by the Inquiry Officer. In support of this proposition we refer to the judgment of the Honourable Supreme Court in the case of *U.P. State Road Transport Corporation Vs. Vinod Kumar, reported in (2008) 1 Supreme Court Cases 115*.

18. In the present case also the Labour Court has rightly not interfered with the finding of the Inquiry Officer; which was the correct approach. Therefore, the learned Single Judge also should not have interfered with such findings.

19. The Honourable Supreme Court in the case of *Surya Dev Rai Vs. Ram Chander Rai and Ors. reported in (2003) 6 Supreme Court Cases 675*, has considered the scope of powers which can be exercised by the High Court under Article 226 and 227 of the Constitution of India. It was laid down that the High Court in exercise of such power cannot convert itself into a

Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors of mere formal or technical character or those made in drawing inferences.

20. In our view, the learned Single Judge has clearly fell in error in re-appreciating the evidence to hold that the findings recorded by the Inquiry Officer and the Labour Court were perverse. In our opinion this was not a correct approach and in any case reasoning given by the learned Single Judge to reach her conclusions are not reasonable neither are they supported by the material on record. Hence we set aside the impugned judgment and order dated 23/12/2005 passed by the learned Single Judge of this Court in Writ Petition No.7589/00. Consequently the Letters Patent Appeal No.241/06 is dismissed and the Letters Patent Appeal No.31/06 is allowed and the Award part II dated 04/01/2000 passed by the Labour Court at Pune in Reference (ID) No.28 of 1991 is restored.

21. At this stage, the learned counsel for Shewate stated

that, during the pendency of the present appeals TELCO has deposited some amount in this Court as directed and some part of it is withdrawn by Shewate. It was prayed on behalf of Shewate that Shewate may not be directed to repay the said amount. Mr.Kiran Bapat on behalf of TELCO fairly submits that he has no objection if such amount is retained by Shewate. In this view of the matter, it shall not be necessary for Shewate to refund such amount. The balance amount, if any, deposited by TELCO in this Court shall be refunded to TELCO.

(SARANG V. KOTWAL, J.)

(SMT. VASANTI A. NAIK, J.)